SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1964~~ 1965

No. ~~598~~ 12

THE WESTERN PACIFIC RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

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[fol. 1] Secretary's Certificate to following transcript (omitted in printing).

[fol. 5]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Docket No. 33679

THE WESTERN PACIFIC RAILROAD COMPANY, SACRAMENTO NORTHERN RAILWAY, and TIDEWATER SOUTHERN RAILWAY COMPANY, Complainants,

vs.

CAMAS PRAIRIE RR. CO., GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, PACIFIC COAST RR. CO., SPOKANE INTERNATIONAL RAILROAD COMPANY, UNION PACIFIC RAILROAD COMPANY, WALLA WALLA VALLEY RAILWAY COMPANY, WASHINGTON, IDAHO & MONTANA RAILWAY COMPANY, and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Defendants.

COMPLAINT—Filed February 10, 1961

To the Interstate Commerce Commission:

The complainants, The Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Company, hereby charge that they are unlawfully prevented from publishing competitive through joint rates and competitive through routes with the defendants, Camas Prairie RR. Co., Great Northern Railway Company, Northern Pacific Railway Company, Pacific Coast RR. Co., Spokane International Railroad Company, Union Pacific Railroad Company, Walla Walla Valley Railway Company, Washington, Idaho & Montana Railway Company, and The Atchison, Topeka and Santa Fe Railway Company, on [fol. 6] freight traffic moving between California points on

the one hand, and points on defendants' lines in Oregon, Washington and Idaho on the other.

Complainants serve the territory herein involved through, and together with its connections, The Atchison, Topeka and Santa Fe Railway Company and the Great Northern Railway Company, and as the complainants seek the prescription of through routes and joint rates to which these carriers will be necessary parties, they are herein named as defendants. However, the defendants, The Atchison, Topeka and Santa Fe Railway Company and the Great Northern Railway Company, have clearly stated their willingness to voluntarily join with complainants in the establishment of the sought through routes and joint rates between points in California and points on the lines of the other defendants in Oregon, Washington and Idaho.

By this complaint, therefore, complainants respectfully show:

I

That the complainants, The Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Company, hereinafter referred to as "Western Pacific", "Sacramento Northern", "Tidewater Southern", or "complainants", are all corporations organized and existing under the laws of the State of California; that they are all common carriers by railroad engaged in [fol. 7] the transportation of property in interstate and foreign commerce and as such are all subject to the provisions of the Interstate Commerce Act.

II

That all of the defendants, hereinafter referred to as "Northern Pacific", "Union Pacific", "Great Northern", "Santa Fe", or in the case of Camas Prairie, Pacific Coast, Spokane International, Walla Walla Valley, Washington, Idaho & Montana, as the "short line connections of defendants Northern Pacific and Union Pacific", are common carriers by railroad engaged in the transportation of prop-

erty in interstate and foreign commerce and as such common carriers are subject to the provisions of the Interstate Commerce Act.

III

That the complainant, Western Pacific, is an integral part of a north-south route via Bieber, California, which route is known as the "Inside Gateway"; that the "Inside Gateway" route is composed principally of Western Pacific and the defendants, Great Northern and Santa Fe, and serves among others, points in California on the one hand, and points in Oregon, Washington and Idaho on the other; that the principal California terminals of this route are at San Diego and Los Angeles, California, on the Santa Fe; on Western Pacific in the San Francisco-Oakland, California, Metropolitan Area; and that the principal northern [fol. 8] terminals are on the Great Northern at Portland, Oregon, and Seattle and Spokane, Washington.

That the complainant, Western Pacific, connects with the defendant, Santa Fe, at Stockton, California, and with the defendant, Great Northern, at Bieber, California; that the defendant, Great Northern connects with the defendants, Union Pacific and Northern Pacific, at Portland, Oregon; that the complainants, Sacramento Northern and Tidewater Southern serve points in northern California and connect with the complainant, Western Pacific, at various points in northern California.

IV

That defendants, Northern Pacific and Union Pacific, with their short line connections, also named herein as defendants, make up a north-south route between California and other points, on the one hand, and on the other, points and places in the States of Oregon, Washington and Idaho, via connections with the Southern Pacific Company at Portland, Oregon; that through routes and joint through rates now exist and have for many years existed for the routing of traffic between points on the Northern Pacific and Union

Pacific, including their short line connections and points in various western states, including southern and northern California, served by the Southern Pacific Company and the defendant, Santa Fe: That the following named tariffs [fol. 9] are representative of those which publish such through routes and joint through rates:

Tariff Number	*I.C.C. Number of Pacific Southcoast Freight Bureau, Agent*
1-S	1352
60-M	1420
80-I	1536
241-E	1577
295-D	1677
297-D	1678
1016	1590

V

That complete interchange facilities have existed for many years and now continue to exist between the complainant, Western Pacific, and the defendant, Great Northern, at Bieber, California, and between the complainant, Western Pacific, and defendant, Santa Fe, at Stockton, California; and between the complainant, Western Pacific, and the complainants, Sacramento Northern and Tidewater Southern, at various northern California points; that complete interchange facilities now exist and for many years have existed between the defendants, Northern Pacific and Union Pacific and defendant, Great Northern, at Portland, Oregon.

VI

That complainants have requested defendants, Northern Pacific, Union Pacific and their short line connections, to [fol. 10] join complainants and the Santa Fe and Great Northern, in the publication of through rates and divisions between California points and points in Oregon, Washington and Idaho; that such through rates and divisions have

been sought on the same basis as that granted by said defendants to complainants' competitor, the Southern Pacific Company; that defendants, Northern Pacific and Union Pacific, together with their short line connections, unlawfully refuse to join with complainants and the Santa Fe and Great Northern in such joint through routes and rates as they have accorded the Southern Pacific on traffic between the territory herein described; that this refusal has been complete except to the very limited extent that the defendants have joined with the defendant, Great Northern and the complainant, Western Pacific, in joint through rates and routes via Bieber on motor vehicles originating at Decoto and Melrose (Oakland), California, and on cast iron pipe from Decoto, California, and to those instances where the Interstate Commerce Commission has heretofore prescribed through routes and joint rates such as on livestock and the Class Rates.

VII

That by reason of this unlawful and unreasonable refusal, the combination of rates and charges are the applicable rates and charges on traffic moving via the "Inside Gateway" between points in Oregon, Washington and Idaho on lines of the defendants, Northern Pacific and Union [fol. 11] Pacific and their short line connections, and points in northern and southern California. Such combination rates exceed the joint through rates over Portland, Oregon, which apply when the routing south of Portland is via Southern Pacific Company only, or via Southern Pacific Company and Santa Fe.

VIII

That by reason of the relationship of rates outlined in paragraph VII herein, complainants are unable to compete with the Southern Pacific Company for traffic moving between points in California and points in Oregon, Washington and Idaho on the lines of the defendants, Northern Pacific and Union Pacific and their short line connections named as defendants herein.

IX

That this refusal and failure by defendants, constitutes a violation of Sections 1(4) and 3(4) of Part I of the Interstate Commerce Act and is contrary to the provisions of the National Transportation Policy.

X

That the Commission is requested to prescribe just, reasonable and nondiscriminatory competitive joint through rates, charges, practices and through routes applicable to the transportation of freight traffic moving between points in California and points in the States of Oregon, Washington and Idaho via the "Inside Gateway" through Port- [fol. 12] land, Oregon, so that complainants and defendants, Great Northern and Santa Fe, may participate on a basis equal to that being maintained by the defendants, Northern Pacific and Union Pacific and their short line connections, with complainants' competitor, Southern Pacific Company, also through Portland, Oregon.

XI

That complainants are willing, and they are informed that their connections, Santa Fe and Great Northern, are also willing to voluntarily establish such just, reasonable, equitable, nonpreferential and nonprejudicial divisions as will assure the Northern Pacific, Union Pacific and their short line connections the same earnings under the sought routes and rates as the latter carriers are now earning on the involved traffic which they now interchange with the Southern Pacific Company at Portland, Oregon, when and if the sought rates are made effective; that this proceeding should be held open to allow the parties an opportunity to voluntarily establish such just, reasonable, equitable, nonpreferential and nonprejudicial divisions; that in the event of failure to voluntarily establish such divisions the proceeding should be assigned for further hearing so that the Commission may determine and prescribe just, reasonable,

equitable, nonpreferential and nonprejudicial divisions as between the parties.

XII

That the traffic covered by this complaint, and the re- [fol. 13] lief sought thereon, includes freight traffic generally of whatever description or class of service, together with all terminal services, allowances, transit and other privileges, including, but not limited to diversion and reconsignment in connection therewith; that the relief is sought wherever such arrangements do not already exist via the "Inside Gateway" in conjunction with complainants; that complainants seek equal treatment with their competitor, Southern Pacific Company, on traffic moving between points in California on the one hand, and points on the lines of the Northern Pacific and Union Pacific and their short line connections in Oregon, Washington and Idaho on the other; that complainants seek this relief of such equal treatment to the same extent and/or on the same basis as such joint rates, routing and privileges are now, or in the future may be, accorded their competitor, Southearn Pacific Company and its connections.

XIII

That by reason of the facts stated in the foregoing paragraphs, the failure and refusal of the defendants to establish competitive joint through rates and charges and through routes applicable to the freight traffic from and to the points hereinabove described, constitute violations by defendants of Sections 1(4) and 3(4), Part I of the Interstate Commerce Act; are contrary to the National Transportation Policy; and deprive the public and complainants of the use of reasonable through routes at reasonable and [fol. 14] nondiscriminatory through joint rates which are necessary and desirable in the public interest.

Wherefore, complainants pray that defendants may be severally required to answer the charges herein; that after due hearing and investigation, an order of the Commission

be made commanding said defendants, and each of them, to cease and desist from the aforesaid violations of the Interstate Commerce Act and the National Transportation Policy and requiring said defendants to establish, put in force, maintain and apply in the future to the transportation of the freight traffic hereinabove described in lieu of the existing unjust, unreasonable and discriminatory combination rates and charges and practices, just, reasonable, nondiscriminatory and competitive joint through rates, charges and practices and through routes; in the event defendants fail and refuse voluntarily to establish just, reasonable, equitable, nonpreferential and nonprejudicial divisions of said joint rates and charges, the Commission by its order determine and prescribe such divisions; and that the Commission enter such other and further order or orders as it may deem meet and proper in the circumstances.

Dated at San Francisco, California, this 6th day of [fol. 15] February, 1961.

Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 17]

BEFORE THE INTERSTATE COMMERCE COMMISSION

ICC 33679

[Title omitted]

SEPARATE ANSWER OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—Filed March 2, 1961

For answer to the complaint herein, defendant, The Atchison, Topeka and Sante Fe Railway Company states that it is willing to join with complainants and other rail carriers in establishing the joint rates and through routes which complainants ask the Commission to prescribe, and

therefore consents to the entry against it of appropriate orders granting the relief prayed for by complainants.

The Atchison, Topeka and Santa Fe Railway Company, By Roland J. Lehman, S. R. Brittingham, Jr., Its Attorneys.

1211 Railway Exchange, Chicago, Illinois.

Dated: February 28, 1961.

[fol. 18] Certificate of Service (omitted in printing).

[fol. 19]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

SEPARATE ANSWER OF NORTHERN PACIFIC RAILWAY COMPANY, CAMAS PRAIRIE RAILROAD COMPANY and WALLA WALLA VALLEY RAILWAY COMPANY—Filed March 10, 1961

Come now the above-named defendants and in answer to the complaint in this proceeding respectfully state:

1. These defendants admit that they are common carriers by railroad engaged in the transportation of property in interstate and foreign commerce and are subject to the provisions of the Interstate Commerce Act as alleged in Paragraph II of said complaint.

2. Except as above admitted, these defendants deny each and every other allegation in said complaint.

Wherefore, defendants pray that the complaint in this proceeding be dismissed.

Northern Pacific Railway Company, Camas Prairie Railroad Company, Walla Walla Valley Railway Company, By M. L. Countryman, Jr., Earl F. Requa, Its Attorneys.

Dated: March 7, 1961.

1018 Northern Pacific Bldg., St. Paul 1, Minnesota.

[fol. 20] Certificate of Service (omitted in printing).

[fol. 21]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

ANSWER OF UNION PACIFIC RAILROAD COMPANY and SPOKANE INTERNATIONAL RAILROAD COMPANY—Filed March 13, 1961

The above-named defendants, for answer to the complaint in this proceeding, respectfully state:

1. These defendants admit that they are common carriers of property by railroad in interstate commerce subject to the provisions of the Interstate Commerce Act, as alleged in Paragraph II of said complaint.

2. These defendants deny each and every other allegation in Paragraphs I, III, IV, V, VI, VII, VIII, IX, X, XI, XII and XIII of said complaint.

Wherefore, defendants pray that the complaint in this proceeding be dismissed.

Union Pacific Railroad Company, Spokane International Railroad Company, By L. W. Hobbs, John J. Burchell, Their Attorneys.

Dated: March 10, 1961.

1416 Dodge Street, Omaha 2, Nebraska.

[fol. 22] Certificate of Service (omitted in printing).

[fol. 24]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

ANSWER OF GREAT NORTHERN RAILWAY COMPANY and PACIFIC COAST R. R. Co.—Filed March 15, 1961

Defendants Great Northern Railway Company and Pacific Coast R. R. Co. for answer to the complaint herein:

I.

Admit and allege that they now are and have been willing to establish voluntarily on traffic moving between California and Idaho, Oregon and Washington via the "Inside Gateway" a general line of competitive joint through freight rates to and from stations reached via defendants Union [fol. 25] Pacific and Northern Pacific and their short-line connections. Such joint through freight rates would be equal to and competitive with those applicable via the route of Southern Pacific in connection with such other defendants. These answering defendants further admit and allege that they are willing to establish just, reasonable, equitable, nonpreferential and nonprejudicial divisions on traffic moving under such rates. These defendants allege, in addition, that to and from stations in Oregon, Washington and Idaho on their own lines and the lines of short-line connections of Great Northern there is now applicable a general line of joint through freight rates via the Inside Gateway competitive with rates via Southern Pacific. It is now and has been the policy of these answering defendants to preserve and foster the Inside Gateway as a route for all traffic between points in the states described moving under rates *within the control* of these answering defendants.

II.

To the extent that the complaint herein alleges a failure of the defendants Union Pacific, Northern Pacific and their short-line connections to join with complainants, Santa Fe, and Great Northern in joint through freight rates via the Inside Gateway fully competitive with those in which Union Pacific and Northern Pacific now participate in connection [fol. 26] with Southern Pacific, these answering defendants, Great Northern and Pacific Coast, allege that they have no control over and are not responsible for such failure. If the situation resulting therefrom is violative of any provisions of the Interstate Commerce Act or of the National Transportation Policy, these answering defendants, because of the facts stated in this answer, are not chargeable therewith.

Wherefore, these answering defendants pray that this Commission take such action with respect to the complaint herein as may be warranted by the facts to be shown by the parties and as shall be consistent with the allegations of this answer.

Dated March 13, 1961.

Anthony Kane, L. E. Torinus, R. P. Tjossem, Woodrow L. Taylor, Attorneys for Defendants Great Northern Railway Company and Pacific Coast R. R. Co., 175 East Fourth Street, St. Paul 1, Minnesota.

[fol. 27] Certificate of Service (omitted in printing).

[fol. 28]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

ANSWER OF WASHINGTON, IDAHO, AND MONTANA RAILWAY COMPANY—Filed March 16, 1961

The above-named defendant, for answer to the complaint in this proceeding, respectfully states:

1. The defendant is a common carrier of property by railroad in interstate commerce subject to the provisions of the Interstate Commerce Act, as alleged in Paragraph II of said complaint.

2. The Washington, Idaho, and Montana Railway has a physical connection and interchange traffic ONLY with the Northern Pacific Railway Company and the Great Northern Railway Company at Palouse, Washington, and the Chicago, Milwaukee, St. Paul and Pacific Railway Company at Bovill, Idaho.

3. The Washington, Idaho and Montana Railway Company is a party to certain tariffs named in the complaint and does participate in through routes and joint rates with the Great Northern Railway Company and the Western Pacific Railway Company to the extent it has been requested and is able to handle traffic with the GN-WP.

4. The Washington, Idaho and Montana Railway Company does not have through routes and joint rates with the Northern Pacific Railway Company or other defendants (except the Great Northern Railway) since it is not the dominating factor in determining participation in sought routes and rates.

5. The Washington, Idaho and Montana Railway Company denies other allegations named in complaint.

Washington, Idaho and Montana Railway Company,
By A. K. Hinckle, Vice President.

Dated: March 10, 1961.

P. O. Box 600, Lewiston, Idaho.

[fol. 29] Certificate of Service (omitted in printing).

[fol. 31] [File endorsement omitted]

[fol. 32]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

PETITION OF SOUTHERN PACIFIC COMPANY FOR LEAVE TO INTERVENE IN OPPOSITION TO COMPLAINT—Filed at Hearing, May 8, 1961

Comes now your petitioner, Southern Pacific Company, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I

Petitioner is a Delaware corporation which owns or operates property situated in the states of Oregon, California, Nevada, Arizona, Utah, New Mexico and Texas, and is a carrier by railroad subject to Part I of the Interstate Commerce Act.

[fol. 33] II

Petitioner's lines of railroad connect with the lines of railroad of defendants Northern Pacific Railway Company and Union Pacific Railroad Company at Portland, Ore. Through routes and joint rates exist and have existed for many years for the interchange of traffic between said defendants and petitioner, said through routes and joint rates covering freight traffic moving generally between

points on the lines of said defendants in Oregon, Washington and Idaho, on the one hand, and points in California, on the other hand. Said routes constitute reasonable through routes between said points, and said joint rates are just and reasonable.

III

The violation of section 3(4) of the Interstate Commerce Act alleged in the complaint in this proceeding raises the issue of the favorableness of the transportation conditions of the lines of railroad comprising the Bieber Route between Portland, Ore., and California points (referred to in paragraph III of said complaint), on the one hand, and the transportation conditions of the lines of petitioner between said points (referred to in paragraph IV of said complaint), on the other hand.

IV

The position of petitioner is in opposition to the relief sought in this proceeding.

Wherefore said Southern Pacific Company prays leave to intervene and be treated as a party hereto, with the [fol. 34] right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard by counsel upon brief or at the oral argument, if oral argument is granted.

Dated at San Francisco, Calif., this 5th day of May, 1961.

Charles W. Burkett, Jr., Attorney for Petitioner.

Duly sworn to by T. F. Ryan, jurat omitted in printing.

[fol. 37]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

In the Matter of:

THE WESTERN PACIFIC RAILROAD COMPANY, et al.,
Complainants,

v.

CAMAS PRAIRIE RAILROAD COMPANY, et al., Defendants.

Transcript of Hearing—Monday, May 8, 1961

Room 226-A, Old Mint Building
Fifth and Mission Streets
San Francisco, California

• • • • • • •

[fol. 38]

PROCEEDINGS

Exam. Wright: Come to order, please, gentlemen.

• • • • • • •

APPEARANCES

Who appears for the complainant?

Mr. Treanor: Walter G. Treanor, 526 Mission Street, San Francisco, California. I am an attorney admitted to practice.

Exam. Wright: Any further appearances for the complainant?

Mr. Treanor: No, sir.

Exam. Wright: Who appears for the defendants?

Mr. Hobbs: L. W. Hobbs and William P. Higgins, 1416 Dodge Street, Omaha, Nebraska, appearing for the Union Pacific Railroad Company and the Spokane International Railroad Company. We have both been admitted to practice before the Commission.

Mr. Farrell: Frank S. Farrell, Room 1008, Northern Pacific Building, St. Paul, Minnesota.

I appear on behalf of the Northern Pacific Railway Company, Camas Prairie Railroad Company, and the [fol. 39] Walla Walla Valley Railway Company.

I am an attorney admitted to practice before this Commission.

Exam. Wright: Any further appearances on behalf of the defendants?

Mr. Tjosseni: R. Paul Tjosseni, 404 Union Street, Seattle 1, Washington, appearing for the Great Northern Railway Company. I am an attorney admitted to practice.

Mr. Pfrommer: Frederick G. Pfrommer, 114 Sansome Street, San Francisco. I am an attorney admitted to practice. I am appearing on behalf of the Atchison, Topeka and Santa Fe Railway Company, named as a defendant in this proceeding.

However, our formal answer already filed with the Commission states that we consent to the entry against us of appropriate orders granting the relief prayed for by complainant.

Exam. Wright: Any further appearances for the defendant?

Mr. Hinckle: My name is A. K. Hinckle, vice-president of the Washington, Idaho and Montana Railroad Company, named as a defendant.

My appearance today is in support of the complainant.

I am not admitted to practice before the Commission.

Exam. Wright: As a full-time employee, your appearance is noted.

Any further appearances?

Mr. Burkett: Mr. Examiner, my name is Charles W. Burkett, Jr. I am an attorney-at-law, admitted to prac- [fol. 40] tice before the Commission.

At this time I would like to tender a petition for leave to intervene in opposition to the complaint, original and one copy for you, one copy for the reporter, I believe.

Exam. Wright: Are there any further petitions for intervention?

(No response.)

Exam. Wright: Any further appearances?

Mr. Allen: Mr. Examiner, my name is A. R. Allen. I am manager of the Portland Freight Traffic Association. I am admitted to practice before the Commission.

Our appearance at this moment is as an interested party.

Should I have given my address on that, sir?

Exam. Wright: For the benefit of the reporter, yes.

Mr. Allen: 907 Oregon Bank Building, Portland 4, Oregon.

Exam. Wright: Are there any further appearances?

(No response.)

Exam. Wright: If there are no further appearances, do the parties wish to examine this petition for intervention?

Mr. Treanor: So far as the complainant is concerned, Your Honor, we do not. We are delighted to have them in.

Mr. Burkett: We are delighted to be here.

Exam. Wright: Are there any objections to the petition?

(No response.)

Exam. Wright: Hearing none, the petition is granted. [fol. 41] As I mentioned previously, this is a complaint proceeding, and I believe there is no need of any statement regarding the issues. They are pretty well framed by the complaint and answers.

• • • • • • •

Mr. Treanor: I would like to call Mr. Wadsworth.

T. P. WADSWORTH was duly sworn and testified as follows:

Exam. Wright: Off the record.

(Discussion off the record.)

Exam. Wright: On the record.

Mr. Treanor: Your Honor, this witness has prepared his testimony in statement form. I would like to request the permission of the Examiner for Mr. Wadsworth to read this statement as his direct testimony.

Exam. Wright: Does the statement make reference to the Exhibits 1 through 16, which were just marked off the record?

Mr. Treanor: Yes, Mr. Examiner, and they are referred to in order, as we come to them.

[fol. 42] Exam. Wright: And this statement, copies of it, have been provided all the parties?

Mr. Treanor: Yes, sir, it was provided for them this morning in the hearing room.

(Complainants' Exhibits Nos. 1 through 16, inclusive, Witness Wadsworth, were marked for identification.)

Exam. Wright: I wonder—it is quite voluminous. I was thinking possibly of saving time by having it entered into the record the same as if read.

• • • • • • •

[fol. 43] Direct examination.

By Mr. Treanor:

Q. Mr. Wadsworth, I would like to direct your attention to your exhibit which has been marked for identification as No. 9.

You have called my attention to a correction which you desire to make in that exhibit. Would you please state for the record the nature of that correction in Exhibit for identification No. 9?

A. I would like to eliminate the Columns 11, 12, 13, 14 and 15, lines 1, 2 and 3.

Mr. Hobbs: One page?

Mr. Treanor: One page.

The Witness: The first page.

Exam. Wright: Will you state that again? Columns—

The Witness: Columns 11, 12, 13, 14 and 15, lines 1, 2 and 3.

By Mr. Treanor:

Q. For clarification, Mr. Wadsworth, you are talking about the elimination of those columns only to the extent that they refer or apply in connection with the specific lines that you have mentioned?

A. That is right.

Q. You do not desire to take out those columns in their entirety?

Exam. Wright: I think that is clear.

[fol. 44] The Witness: Also, the same columns for line 14, I believe it is 14.

Mr. Farrell: On the same page?

Exam. Wright: The same page?

The Witness: The same page.

Exam. Wright: Exhibit 9 is so modified.

Thank you very much, Mr. Wadsworth. If there are no further questions, you are excused until tomorrow morning, and I direct that the reporter enter into the record, the same as if read, the 31-page statement headed, "Statement of T. P. Wadsworth."

(Witness excused.)

(The document referred to is copied into the record in words and figures, as follows:)

STATEMENT OF T. P. WADSWORTH

My name is T. P. Wadsworth. My business address is 526 Mission Street, San Francisco 5, California. I am employed by the Western Pacific Railroad Company as Assistant Director of Pricing, a position sometimes identified by other railroads as Assistant Freight Traffic Manager.

I have been continuously employed in the field of transportation, primarily dealing with rates and rate practices, since 1926. I have been with the Western Pacific since 1929. I have a Bachelor of Science degree granted by the [fol. 45] University of California at Berkeley. I am a registered practitioner before the Interstate Commerce Commission. My present duties include, among other things, the supervision of the preparation of data for submission to the Interstate Commerce Commission and various State regulatory bodies.

I submit this statement on behalf of the complainants.

The Northern Pacific, whose rails reach no point in California, maintains joint rates with the Southern Pacific via Portland, Oregon, in order to participate in traffic between points in California and points in Oregon, Washington, and Northern Idaho.

The Northern Pacific, having an interchange at Portland also with the Great Northern, has refused to publish rates through this interchange, thence via Bieber, in connection with the Western Pacific, Sacramento Northern and Tidewater Southern, the complainants in these proceedings.

The Union Pacific, whose own rails reach California only in the Los Angeles area, participates in joint rates between points in California on the complainants, and points on its lines, Huntington, Oregon, and east, including all stations, in Oregon, Idaho, Utah, Nevada, Montana and Wyoming. Such joint rates are competitive with those maintained by the Union Pacific with the Southern Pacific via Wells, Nevada, or Ogden, Utah. This segment of the Union Pacific was formerly known as the "Oregon

[fol. 46] Short Line Railroad". The Union Pacific participates via Portland, Oregon, with the Southern Pacific in joint rates between points in California and points on its line west of Huntington, Oregon, located in the States of Oregon, Washington, and Northern Idaho, but has declined to participate with complainants, from or to the same points, via Portland, Oregon, thence via Bieber, California, over the routes presently in effect between complainants and the Great Northern, a connection of the Union Pacific at Portland, Oregon.

This segment of the Union Pacific was formerly known as the "Oregon, Washington, Railroad & Navigation Company."

The Great Northern participates with complainants in joint rates via Bieber, California, between points in California and Portland, Oregon, and other points on its lines in Oregon, Washington, and Northern Idaho. Such joint rate policy of the Great Northern and the complainants has been in effect since 1931 when the Bieber route was constructed under authority of the Interstate Commerce Commission's Finance Dockets Nos. 7439, 7440 and 7781 (166 ICC 3 and 170 ICC 399).

Such joint rates were then, and are now, generally the same as those published by the Great Northern with the Southern Pacific via Portland, Oregon, which were then, and still are, the same generally as the joint rates published by the Northern Pacific and Union Pacific via Portland, Oregon, thence Southern Pacific.

[fol. 47] Joint rates are now provided in connection with the Santa Fe as follows:

1. It participates in joint through rates via Bieber to or from points on the Great Northern.

2. It participates in joint through rates in connection with Southern Pacific via Portland to or from points on the Great Northern, Northern Pacific and Union Pacific.

My Exhibit numbered 1 for identification, is a map which shows the Pacific Coast areas involved in this case, as well as the locations of the lines and routes of the complainants and defendants. This map is a situation map designed to show this information in a general way. It was not drawn to scale or intended to be completely accurate in all respects.

Exhibit 2 is another map which shows the points in California served by complainants, as well as the relationship between such points and those situated on the Southern Pacific, with whom the defendants maintain joint rates via Portland, Oregon.

Complainants operate 987 miles of railway lines in the State of California, as shown by Table 1 of Exhibit 3.

The larger cities in the territory served by complainants are listed in Table 2 of Exhibit 3.

Through joint class and commodity rates are in effect with routing via Bieber between points on complainants' [fol. 48] lines shown in Exhibit 2 and points in Oregon, Washington and Northern Idaho on the Great Northern and its short line connections other than Northern Pacific or Union Pacific. These rates are published in tariffs issued by the Pacific Southcoast Freight Bureau named in Table 3, Exhibit 3.

Tariffs in Table 3, Exhibit 3, also contain rates between points on the Northern Pacific or Union Pacific in the Northwest and points in California on Southern Pacific with routing via Portland, as shown by my Exhibit No. 4.

The details of the routes now published via Bieber in the above tariffs are shown by my Exhibit No. 5, containing copies of pages of routing in PSFB Tariff 1-S, used as representative. These routes are summarized in Table 4 in Exhibit 3.

Some of the points on the Great Northern, to or from which present rates with complainants apply, are equipped with facilities for the interchange of freight with the Northern Pacific or Union Pacific. These stations are named in Table 5 in Exhibit 3, and are shown as well, in red, on Exhibits 6 and 7.

Some stations served in common by the Great Northern-Northern Pacific or Great Northern-Union Pacific, have no facilities for the interchange of freight; those in Table 6 in Exhibit 3 are representative.

Table 7 in Exhibit 3 outlines the basis of charges generally applicable now, on traffic moving via Bieber between points in Oregon, Washington and Northern Idaho on the Northern Pacific or Union Pacific and points in California on the complainants.

[fol. 49] Table 7 in Exhibit 3 shows that shipments may move from or to points in California via complainants' existing routes with the Great Northern via Bieber to or from industries on the tracks of the Northern Pacific or Union Pacific at stations named in Table 5, Exhibit 3. They will be assessed the existing through joint rates of complainants and the Great Northern without extra charges for switching by Northern Pacific or Union Pacific in some cases, and with such charges being in addition, in others. The reason for the difference is that the Great Northern does not absorb the Northern Pacific or Union Pacific switching charge in all instances on traffic moving via Bieber. Its tariff No. 2500-E, ICC A-8996 permits absorption of connecting lines' switching charges only on "competitive" traffic. Item 110 of that tariff defines "competitive" traffic as that "which at time of shipment may be handled at equal rates (exclusive of switching charges) from same point of origin to same destination via other carriers, one of which performs the switching service or absorbs the switching charge of the line serving the industry."

Thus, under this tariff, the Great Northern absorbs the switching charges of the Northern Pacific or Union Pacific at stations named in Table 5, Exhibit 3, only when the traffic has moved via Bieber from or to points on complainants' lines shown in Table 8 in Exhibit 3. This traffic is "competitive" since the points in Table 8 in Exhibit 3 are [fol. 50] common with the Southern Pacific, and the rates from or to such points via Bieber are the same as apply now between the same points via other routes, such as:

SP-Portland-GN,
SP-Portland-NP,
SP-Portland-UP.

The stations on complainants' lines, originating or terminating traffic on which the Great Northern absorbs Northern Pacific or Union Pacific switching charges, as above stated, are divisible into two main classes.

The first class covers the points having facilities for interchange with Southern Pacific. They are designated on Exhibit 2 by a "'" reference mark, and are summarized in Table 8 of Exhibit 3.

The second class covers those which while served in common with the Southern Pacific, have no interchange facilities with that line. Those stations are underlined in Exhibit 2, and are summarized in Table 9 of Exhibit 3.

Shipments from or to points served only by complainants such as those named in Table 10 of Exhibit 3, are subject to extra charges for switching by the Northern Pacific or Union Pacific at stations in Table 5, Exhibit 3, when routed to or from the stations in Table 5 of said Exhibit 3 via the Great Northern via Bieber. This is due to the fact that the traffic is not "competitive" as present combinations be- [fol. 51] tween points in Tables 5 and 10 via Bieber-GN-Portland-NP or UP are higher than rates now published via Bieber-GN.

The amount of the unabsorbed switching charge depends upon the station where the switching is performed or upon the switching zone where the industry is located. Representative charges of this kind are furnished in Table 11 of Exhibit 3.

Traffic moving to or from points on the Northern Pacific or Union Pacific which are not also served by the Great Northern, such as those listed in Table 12 of Exhibit 3, is subject to charges described below:

Present charges are combinations of unabsorbed switching charges and through rates, as to shipments from or to points which complainants serve in common with Southern

Pacific, where interchanges exist as described by Table 8 of Exhibit 3. The switching charges cover the movement of the freight between the industry track on complainants and the interchange with the Southern Pacific. The rate covers the movement beyond the station via Southern Pacific through Portland to or from the exclusive point on the Northern Pacific or Union Pacific. This switching charge is $6.89 per car and is published in tariffs named in Table 13 of Exhibit 3.

This switching charge is assessed, in addition to applicable freight rate, because it is not absorbed by the Southern Pacific. This charge is not absorbed because Southern Pacific absorbs connecting lines' switching charges only on [fol. 52] "competitive" traffic, and this traffic is not "competitive" as defined by Item 10 of SP Tariff No. 230-K, ICC No. 4960.

Denial by the Northern Pacific and Union Pacific of through joint rates via Bieber deprives complainants of an opportunity to participate in line haul service on this traffic.

A good example is the movement of canned goods from Sacramento, California, to points on the Northern Pacific or Union Pacific in Oregon, Washington, and Northern Idaho. In 1959 the Campbell Soup Company, whose plant at Sacramento is located on the Western Pacific, shipped over 150 carloads to exclusive points on the Northern Pacific and Union Pacific. This traffic moved from Sacramento via Southern Pacific since the combination rates applicable via Bieber exceeded the through rates via Southern Pacific-Northern Pacific or Southern Pacific-Union Pacific through Portland.

In November, 1960, the Campbell Soup Company applied to the interested lines for through competitive rates from Sacramento via Bieber to destinations on the Northern Pacific and Union Pacific as well as to points on their short line connecting carriers. The applicant stated at that time that the use of existing routes via Southern Pacific through Portland imposed additional transportation charges over

and above those that would apply if rates were established via Bieber. Such "additional transportation charges" referred to the charges of the Western Pacific for switching [fol. 53] from the plant to the interchange with the Southern Pacific. At that time, those switching charges were not absorbed by Southern Pacific.

However, on March 6, 1961, Southern Pacific published an extraordinary exception to its general practice of absorbing switching charges only on competitive traffic. Effective on that date, it published a provision in Item 995 of its Tariff 230-K, ICC 4960, authorizing absorption of the charge made by the Western Pacific for switching freight from industry tracks at Sacramento to its interchange track with Southern Pacific. This absorption was published on "Canned or Preserved Foodstuffs (not cold pack nor frozen) and other articles moving to stations on the Northern or Union Pacific in Oregon, Washington or Idaho, under rates published in Items 4837, 4837.8 or 4838 of PSFB Tariff 1-S, ICC 1352." A copy of this absorption is reproduced as Exhibit 8.

Combinations of line haul rates now apply on shipments between exclusive points on complainants in Table 10 of Exhibit 3, and exclusive points on Northern Pacific or Union Pacific in Table 6 of Exhibit 3.

Exhibit 9 shows examples of the present combinations over Portland, Oregon, using the following rates as factors:

Between Portland and points on complainants, the rates used are the present through joint rates published via Bieber by complainants and the Great Northern.

[fol. 54] Between Portland, Oregon, and points on the Northern Pacific or Union Pacific, the rates used are the present rates published by the Northern Pacific or Union Pacific.

Exhibit 9 shows that the combinations over Portland applicable via complainants to Bieber-GN-Portland thence Northern Pacific or Union Pacific exceed the present through joint rates published by the Northern Pacific or Union Pacific to Portland thence via Southern Pacific, to

or from points in California on the Southern Pacific or the Santa Fe Railway.

The lowest combination rates now applicable via any all-rail route, between points on complainants and points on the Northern Pacific or Union Pacific, are the lower of the combinations described below:

1. Combination over the lowest rated interchange point with the Southern Pacific in California, or

2. Combination over the lowest rated interchange point between the Great Northern and Northern Pacific or Union Pacific in Oregon, Washington or Northern Idaho.

Combination rate, now the lowest rate applicable on canned goods from McHenry, California, to Yakima, Washington, via any all-rail route, is an example of the situation where the lowest rate from a point on a complainant's line to a point on the Northern Pacific or Union Pacific is a combination over a point in California which is an interchange with the Southern Pacific. This rate is [fol. 55] a combination over Stockton, using the rate from McHenry to Stockton as one factor, and the rate from Stockton to Yakima, as the other. This combination rate applies only via the route of the Tidewater Southern to Stockton, thence via Southern Pacific to Portland, thence Northern Pacific or Union Pacific. This combination rate prevents Western Pacific from participating in the movement of canned goods to Yakima which originates at a local point on the Tidewater Southern, a subsidiary railwayline owned by the Western Pacific. The reason is that both the Northern Pacific and Union Pacific have refused to publish the same rates on canned goods from Stockton to Yakima via WP-GN-Portland, as apply now via SP-Portland. Moreover, they have also declined to publish through joint rates on this commodity from McHenry to Yakima via TS-WP-GN-Portland thence Northern Pacific or Union Pacific. The station, McHenry, is located on the

Tidewater Southern between Stockton and Modesto, and would have rates competitive with other shippers in the same general area, if the Northern Pacific or Union Pacific would establish the same rates to Yakima from Modesto via TS-WP-GN through Portland as they now maintain from Modesto via Southern Pacific through Portland.

Another illustration is the present lowest all-rail rate on canned goods from Yuba City to Walla Walla, Washington. Canners located at Yuba City on the rails of the Sacramento Northern, cannot have their cars switched by [fol. 56] the Sacramento Northern to the Southern Pacific at Yuba City for movement to Walla Walla via SP-Portland-NP or UP under present through joint rates, since Sacramento Northern and Southern Pacific maintain no interchange at Yuba City. The lowest rates now applicable are combinations over Marysville, using as factors, the local rate of the Sacramento Northern from Yuba City to Marysville, plus the joint rate of the Southern Pacific-Northern Pacific or Southern Pacific-Union Pacific from Marysville to Walla Walla. Here, too, the lowest applicable rate deprives the Western Pacific of an opportunity to participate in traffic originated by the Sacramento Northern, its wholly owned subsidiary. This is due to the refusals of the Northern Pacific and Union Pacific to publish rates to Walla Walla, either from Yuba City via SN-WP-GN-Portland or from Marysville via WP-GN-Portland, the same as apply now between the same points via SP-Portland thence Northern Pacific or Union Pacific.

Present rates on other traffic, between points on the Northern Pacific or Union Pacific and points on complainants, are combinations over junction points in the Northwest between the Northern Pacific and Great Northern, or the Union Pacific and Great Northern. Forest products are an example, where the lowest rates from Olympia, Shelton and other points in Washington on the Northern Pacific to San Francisco Bay points are combinations over [fol. 57] Portland, Oregon, using the following rates as factors:

From point of origin to Portland, the rates of the Northern Pacific in North Pacific Coast Freight Bureau Tariff No. 41-J, ICC No. 994.

From Portland to California, the present rates via Bieber in Pacific Southcoast Freight Bureau Tariff No. 80-I, ICC 1536.

At the present time, the combinations over Portland are lower than the through joint rates on Forest Products published to San Francisco Bay points in PSFB Tariff 80-I, ICC 1536, and the restricted routing to confine the application of the through rates to routes via Portland in connection with Southern Pacific are of no avail. This situation is undoubtedly temporary, as if and when the through rates are adjusted to a level lower than the present combinations, they will again be subject to the general routing provisions of this tariff, confining their application to routes between Southern Pacific and Northern Pacific via Portland.

In other instances, the lowest combination rate on traffic between points on the complainants and points on the Northern Pacific or Union Pacific, is a combination over a northern junction point other than Portland. Present rate on canned goods from Oakland, California, to Bellevue, Washington, is an example. Here, the lowest rate is a combination of line haul and switching rates, the latter being absorbed by the Great Northern under authority of [fol. 58] its tariff No. 2500-E, ICC No. A-8996, Item No. 520. The line haul rate is published from Oakland to Seattle, Washington, via WP-Bieber-GN in PSFB Tariff 1-S, ICC No. 1352, and the switching rate is published from Seattle to Bellevue in Northern Pacific Tariff No. 333-B, ICC No. 9801, Item No. 210 of Supplement 12.

There are no through joint rates via Bieber between points on the Northern Pacific or Union Pacific and points on the Santa Fe. On the other hand, through joint rates are in effect now between those points with routing via Northern Pacific or Union Pacific to Portland, Southern Pacific to a junction point in California, thence via the Santa Fe, as shown by Exhibit No. 4. Those joint rates

are published both to points located exclusively on the Santa Fe as well as to points served in common by the Santa Fe and Southern Pacific. They are the same, to or from common points, as the rates published via NP or UP-Portland-SP. They do not, however, include points on the Santa Fe in the San Francisco Bay Area.

No other rates than combinations are available between the same points via NP or UP-Portland-GN-Bieber-WP-Stockton-AT&SF. Exhibit 9 shows that those combinations exceed the joint through rates now in effect via NP or UP-Portland-SP to a junction in California, thence AT&SF. This denies the public of the advantages of alternate routes and deprives the Western Pacific of an opportunity to participate in the movement of traffic between points in California on the Santa Fe and points on the [fol. 59] Northern Pacific and Union Pacific.

Exhibit 10 shows the extent of the movement of freight via Bieber from or to points on the Santa Fe from 1955 through 1959.

This exhibit shows the following:

1. More than 50 per cent of all the cars handled via Bieber moved from or to points on the Santa Fe. This percentage ranged from a high of 58.5 per cent in 1959 to a low of 54.2 per cent in 1957.

2. The number of cars handled via Bieber from or to points on the Santa Fe ranged from a high of 34,077 in 1955 to a low of 28,655 in 1958.

3. Southbound traffic predominates.

I have determined the following since preparation of Exhibit 9:

(a) 1959 traffic via Bieber between points on the Santa Fe and points in the Northwest on the Great Northern produced revenues for the Western Pacific averaging $126.00 per car, northbound, and $116.00 per car, southbound.

(b) Western Pacific's revenues would average about $101.00 per car, northbound, and $93.00 per car, south-

bound, if the same rates were published between points on the Santa Fe and points on Northern Pacific and Union Pacific via Bieber as apply via Northern Pacific or Union Pacific to Portland, thence via Southern Pacific and the Santa Fe.

Exhibit 11 compares the movement of cars from or to [fol. 60] points on the Santa Fe via Bieber with those handled by the Santa Fe in connection with the Southern Pacific through Portland.

Prior to analyzing this exhibit, its following aspects should be observed:

1. Santa Fe furnished only its total number of cars, northbound and southbound, separately. Its totals included its movements both in connection with Southern Pacific through Portland and via Bieber.

2. As shown in the exhibit the total cars via Santa Fe moved only between the States of California and Oregon-Washington.

3. Information on the exhibit as to the extent of Santa Fe's movements via Bieber came from Western Pacific's Accounting Department records. Their scope geographically was broader than the information furnished by the Santa Fe as they included all shipments via Bieber between points west of transcontinental.

4. Information on the exhibit as to the extent of Santa Fe's traffic in connection with Southern Pacific was determined by subtracting its traffic via Bieber from the total.

It should therefore be evident that the resulting traffic via Santa Fe-Southern Pacific was understated.

Exhibit 11 shows that the Santa Fe handled considerably more cars of freight via Bieber than in connection [fol. 61] with Southern Pacific. The totals of the cars handled, northbound and southbound via each route, are summarized in Table 14 of Exhibit 3.

It is reasonable to assume that the Bieber route handled a predominating proportion of the traffic which moved to or from points on the Great Northern from or to points on the Santa Fe. This assumption is based upon the following facts:

1. Santa Fe-GN-WP work as partners in the solicitation of traffic via Bieber, and as I previously testified, the present rates via Bieber apply only to or from points on the Great Northern. The sales activities of these three lines are coordinated and the lines have close working arrangements. No similar arrangements exist between the Santa Fe and Southern Pacific.

2. Santa Fe and Western Pacific freight trains schedules between California and the Northwest are keyed together to produce the best possible services via Bieber. On the other hand, the Santa Fe has no working schedules with the Southern Pacific on California-North Coast traffic. Southern Pacific does not make connections with the Santa Fe's schedules at Stockton. Its "Star Pacer" train to Portland does not pick up cars at Stockton, and its NCP goes through Stockton too early to connect with Santa Fe's SWG.

3. Santa Fe has rates from or to more points on its line via Bieber than in connection with Southern Pacific. [fol. 62] For example, San Francisco Bay points on the Santa Fe are accorded rates via Bieber, whereas they are not permitted to participate in rates via Southern Pacific through Portland.

If the foregoing assumption is true, the preponderance of the traffic handled via Santa Fe in connection with Southern Pacific originated at or was destined to points on the Northern Pacific or Union Pacific. Consequently, if an alternate route had been available to or from points on Northern Pacific or Union Pacific via Bieber, it may be reasonably assumed that it would have handled a large portion of additional traffic (see Table 15, Exhibit 3).

Extent of Present Movements Via Bieber to or From Points on Northern Pacific or Union Pacific

Complainants' Accounting Department records show that the Bieber route handled 143 carloads in 1959 and 165 in 1960, which were shipped to or from points on the Northern Pacific and Union Pacific in Oregon, Washington, and Northern Idaho. Included therein were 124 carloads of cast iron pipe in 1959 and 154 in 1960. The cast iron pipe moved from Carpenter, California, under joint through rates published via WP-Bieber-GN-Portland, thence Northern Pacific or Union Pacific. The remainder consisted of 19 cars of government and commercial freight in 1959 and 11 cars in 1960, as shown by Table 16 in Exhibit 3.

[fol. 63] Commercial traffic, other than cast iron pipe, consisted of 16 carloads in 1959 and six in 1960. It is described by Table 18 of Exhibit 3.

All of the Government traffic moved from military installations in California to Fort Lewis, Washington. It consisted of three carloads in 1959 and five in 1960 as described by Table 17, Exhibit 3.

The extremely limited amount of traffic handled during the past two years, between points on Northern Pacific or Union Pacific and points on complainants, shows that applicable combination rates were too high to permit the traffic to move via Bieber in competition with other routes through Portland, thence Southern Pacific.

Extent of All Traffic Movements Via Bieber

Exhibit 12 shows the extent of the movement of all freight traffic handled by complainants via Bieber for the five years from 1955 through 1959. It shows the number of cars and tons handled, together with Western Pacific's revenues, for the movements via Bieber for both transcontinental and west of transcontinental traffic. The following information is evident from the exhibit:

1. The Bieber route produced about 20 per cent of Western Pacific's freight revenues. The range was

from 19.9 per cent in 1955, 1958 and 1959, to 18.7 per [fol. 64] cent in 1957.

2. Most of the traffic handled via Bieber moved between points west of transcontinental territory. This segment of the traffic via Bieber contributed 83 per cent of the cars and more than 78 per cent of the Western Pacific's revenues. The percentage of west of transcontinental cars handled via Bieber ranged from 86.3 per cent in 1955 to 80.3 per cent in 1958 and 1959.

Exhibit 13 compares the cars, tons and Western Pacific's freight revenues from traffic moving via Bieber to and from points west of transcontinental territory, with those from:

1. Other traffic moving via the Western Pacific to and from points west of transcontinental territory.

2. Total revenue freight traffic handled by the Western Pacific.

This exhibit shows the following:

1. Traffic moving between all points west of transcontinental territory (including Bieber) produced more than 50 per cent of the cars of freight handled by the Western Pacific during the five years from 1955 through 1959, and more than 37 per cent of Western Pacific's freight revenues.

2. Traffic moving via Bieber between points west of transcontinental territory, produced 46 per cent of the cars and more than 40 per cent of Western Pacific's freight revenues from all traffic handled between points [fol. 65] west of transcontinental territory.

3. While Western Pacific's traffic from and to points west of transcontinental territory declined in this period 15 per cent, the decline via Bieber was only 12.6 per cent.

Exhibit 10 shows the number of cars originated and terminated by complainants, as well as those on which they

performed intermediate service to or from the Santa Fe and other connections.

This exhibit shows the following:

1. The Bieber route produces an important amount of traffic for complainants.

2. Northbound traffic in Column 3 exceeded southbound in Column 5 in 1955, 1956 and 1957, but in 1958 and 1959 southbound traffic exceeded northbound.

I have determined the following information concerning Western Pacific's revenues from these movements in 1959, excluding its revenues from traffic which moved in connection with the Santa Fe, on which I have already commented:

(a) Its revenues from northbound traffic averaged $169.63 per car.

(b) Its revenues from southbound traffic averaged $171.86 per car.

I have estimated that Western Pacific's revenues would average about $144.00 per car, northbound, and $146.00 per car southbound, if rates were published via Bieber between [fol. 66] points on Northern Pacific and Union Pacific and points on the complainants and their connections other than the Santa Fe, competitive with those via Northern Pacific-Southern Pacific or Union Pacific-Southern Pacific.

Northern Pacific and Union Pacific have made the following tariff publications which show that Portland, Oregon, is an interchange point on carload traffic with the Great Northern.

They have complied with Rule 10(h) of I.C.C. Tariff Circular No. 20 which requires distance tables to clearly indicate which stations are junction points where it is possible to interchange carload traffic with another railroad without transfer of lading and must name the connecting carriers at each such junction with which such transfer is possible.

Northern Pacific's Table of Distances 1500-I, I.C.C. No. 9759 names Portland, Oregon, as a junction point with the Great Northern at which it is possible to interchange carload traffic without transfer of lading. It also shows that this interchange is through the intermediate switching service of the Northern Pacific Terminal Company. This provision is a comparatively recent publication having been established effective January 31, 1955 on page 3 of Supplement 20 and was designated as resulting in a reduction.

While the Northern Pacific's Table of Distances indicates that its interchange with the Southern Pacific at Portland, Oregon, is by direct track connections, this provision is in-
[fol. 67] accurate because other publications show that the interchanges between these two railroads at Portland, also involve intermediate switching services of the Northern Pacific Terminal Company. The following publications are representative:

(a) Northern Pacific published on page 408 of The Official Railway Equipment Register for April 1960, ICC-RER No. 335 of The Railway Equipment and Publication Company, Agent, that its interchange with Southern Pacific at Portland, Oregon is via the Northern Pacific Terminal Company.

(b) Southern Pacific Local and Joint Distance Table No. 420-D, ICC 4687, shows on page 24, that Portland (Park St.), Oregon, is a point where carload traffic may be interchanged with the Northern Pacific through the Northern Pacific Terminal Company of Oregon.

Shippers are not concerned with the function of the Northern Pacific Terminal Company in these routes, in view of provisions such as Item 735 of PSFB Tariff 1-S, that the joint rates include all charges for switching at intermediate interchange points on shipments handled through.

The Distance Tables show the following with respect to the Great Northern's interchange at Portland with the Union Pacific.

Page 12 of Union Pacific's Distance Tariff No. 4000-B, ICC 5537 publishes Portland, Oregon, as a station where it is possible to interchange carload traffic between the Union [fol. 68] Pacific and Great Northern without transfer of lading.

Page 12 of Great Northern's Official Table of Distances No. 400-C, ICC A-6710 (effective December 14, 1929), shows Portland, Oregon as a point to interchange carload traffic without transfer of lading, between the Great Northern and other defendants as follows:

(a) Northern Pacific (through Northern Pacific Terminal Company of Oregon.)

(b) Oregon, Washington Railroad and Navigation Company (now the Union Pacific Railroad), through Northern Pacific Terminal Company of Oregon.

Page 3 of Supplement 77 of this publication shows that North Portland, Oregon, is another interchange point between the Great Northern and the Union Pacific. This station is within the switching limits of Portland, Oregon, on the Union Pacific according to Official List of Open and Prepay Stations No. 75, ICC A-40 of Station List Publishing Company, Agent.

The following tariffs, other than distance tables, provide that the Northern Pacific and Union Pacific interchange freight with the Great Northern at Portland, Oregon:

North Pacific Coast Freight Bureau Routing Tariff No. 77-D, ICC 980, publishes the following:

Route Numbers	*Route*
5H5	GN-Portland, Oregon, UP
9D5	NP-Portland, Oregon, GN
[fol. 69]	
13D5	UP-Portland, Oregon, GN
13D17	UP-North Portland, Oregon, GN

This tariff also provides that "routes should be read from left to right or from right to left, according to direction in which the shipment moves." Thus, these routes apply in

either direction, both inbound and outbound through Portland.

NPCFB Routing Tariff No. 77-D contains the routes via which the joint rates apply which are published in rate tariffs of the North Pacific Coast Freight Bureau.

Item 18710 of NPCFB and PSFB Freight Tariff No. 1016, ICC 1590 provides routing via GN-Portland-UP for class rates published in that tariff:

From: GN Ry. stations Nos. 9400 to 10040 (points west of Wenatchee, Washington, to but not including Seattle, including Vancouver, B.C., Bellingham, Everett, and Anacortes.

To: UP Stations Nos. 10505 to 10520 (Kenton, Fir, Ward and Hemlock, Oregon.)

10540 to 10680 (Montavilla, Oregon, to Miller, Oregon, including Hood River and The Dalles).

10855 to 11270 (Biggs, Oregon, to Pilot Rock, Oregon, including Arlington, Condon, Heppner and Umatilla).

11715—Juniper, Oregon.

[fol. 70] 117-8—Wallula Junction, Washington.

Item 12420 of PSFB Tariff 220-D, ICC 1514 of PSFB, Agent, provides routing via NP-Portland-GN, Bieber, California, WP or WP and connections via California Junctions:

Between: Points on Northern Pacific in Washington, Yakima, Washington, and West, including branches.

And: Points in California on the Western Pacific and connections (except AT&SF, NWP, SP and VE).

Such routes govern the joint rates published on livestock between the points above mentioned.

Other tariffs mentioned on the following pages, provide joint rates with routing via WP-GN-Portland-NP or UP, to the extent shown.

Cast Iron Pipe

Joint rates are published from Carpenter, California, on the Western Pacific to points in Oregon, Washington, and Northern Idaho via WP-Bieber-GN-Portland, thence Northern Pacific or Union Pacific. These rates are the same as apply between the same points and Decoto, California, on Southern Pacific with routing via Portland, thence Northern Pacific or Union Pacific. Included in the rates published via Bieber also are rates to various connections of the Northern Pacific or Union Pacific, such as the Camas Prairie RR., Washington, Idaho & Montana Ry. [fol. 71] and the Spokane International Ry.

Exhibit 14 contains copies of the pages of PSFB Tariff 1-S, ICC 1352, in which these rates are published.

Initial publication of rates on cast iron pipe in Exhibit 14 became effective June 21, 1952. It was an adjustment to satisfy a complaint filed by the United States Pipe & Foundry Company in Docket 30964.

The pipe company had constructed a plant at Carpenter, California, a substation of Decoto, which was located upon the Western Pacific. It alleged violations of Section 1 and 3 of the Act, arising from the fact that the combination rates then applicable to points on the Northern Pacific and Union Pacific, exceeded the through rates published to the same points from Ironton, Utah, on the Union Pacific. About four months after this complaint was filed, the Northern Pacific and Union Pacific concurred to the publication of rates which satisfied the pipe company. Their concurrences were subject to the same divisions north of Portland, on traffic via Bieber and the Great Northern to Portland, as they received from rates published with the Southern Pacific routing via Portland.

There has been a regular movement of cast iron pipe under these rates; amounting to 124 carloads in 1959 and 154 in 1960.

[fol. 73] *Automobiles*

Joint rates are published via WP-GN-Portland, thence Northern Pacific or Union Pacific on automobiles from Melrose (Oakland) and Decoto, California, on the Western Pacific which are the same as rates between the same points via SP-Portland-NP or UP.

Copies of pages of PSFB Tariff 1-S, ICC 1352, containing rates for boxcar service are contained in Exhibit No. 15 and Exhibit No. 16 contains a copy of PSFB Tariff 297-D, ICC 1678 in which are published TOFC rates on automobiles.

These rates were initially published effective October 4, 1959, as a result of ICC Docket 33118, Western Pacific RR. v. Camas Prairie RR. Co. et al. This complaint was filed in July 1959, alleging violations of Section 1(4) and 3(4) of Part I of the Act by refusal and failure of defendants (including Northern Pacific and Union Pacific) to publish joint through rates with the Western Pacific from Decoto and Melrose (Oakland) via Bieber to the same extent as was granted to the Southern Pacific by defendants. Shortly after the Commission scheduled a hearing for September 1, 1959, the Northern Pacific and Union Pacific advised the Commission and the Western Pacific that they would join in the rates and divisions to the extent requested in the complaint. Upon complainant's request, the Commission dismissed the complaint on November 10, 1959.

[fol. 74] A limited number of commodity rates have been published to or from points on Northern Pacific and Union Pacific with routing via complainants to or from a junction point in California with the Southern Pacific, thence Southern Pacific through Portland.

Rates on sugar from Clarksburg, California, to Walla Walla and Yakima, Washington, via SN-SP-Portland-NP or UP were published in 1936. Both Northern Pacific and Union Pacific declined to participate via Bieber. Complainants agreed to publish these rates in connection with Southern Pacific since the sugar company needed the rates

in order to reach those markets in competition with other California producers.

Other rates established via SN or WP-SP-Portland-NP or UP prior to 1931 were published in that manner because the industries located on the complainants had no other access to markets located in areas served by the Northern Pacific or Union Pacific. Since that time, the Northern California Extensions of the Great Northern and Western Pacific resulted in the construction of the Bieber route in 1931 under authority of Finance Dockets 7439, 7440 and 7881 (166 ICC 3 and 170 ICC 399). In the meantime, the Bieber route has developed into important segments of both the Great Northern and Western Pacific. The conditions justifying issuance of certificates of public convenience and necessity in the Bieber Gateway Case dictate against establishment of additional rates via complainants [fol. 75] with Southern Pacific through Portland, thence Northern Pacific or Union Pacific.

Another significant change in conditions was the emergence of the Western Pacific from a hectic early period fraught with financial problems. This railroad's stature has matured to the extent that it now actively and positively contributes to the public welfare and justifies the faith of the Interstate Commerce Commission in awarding it the certificates of public convenience and necessity in the Bieber Gateway Case. The Western Pacific has vigorously and successfully carried out a program of industrial development in areas tributary to its rails, as well as areas served by the Sacramento Northern and Tidewater Southern, its subsidiaries. For example, its acquisition of land in California has resulted in the location on its rails of such large industries as the Ford Motor Company's automobile plant at Milpitas, and the Campbell Soup Company's plant at Sacramento.

Exam. Wright: Will you call your next witness, Mr. Treanor?

Mr. Treanor: I call Mr. D. L. Loftus, please.

D. L. LOFTUS was duly sworn and testified as follows:

Exam. Wright: Be seated, please.

Mr. Treanor: Your Honor, this witness has three exhibits. May we go off the record and mark them for identication?

[fol. 76] (Discussion off the record.)

Exam. Wright: On the record.

During the off-the-record discussion, Exhibits 17, 18 and 19 were marked for identification.

These are exhibits to be sponsored by Mr. Loftus.

(Complainants' Exhibits Nos. 17, 18 and 19, Witness Loftus, were marked for identification.)

* * * * * * *

Direct examination.

By Mr. Treanor:

Q. Mr. Loftus, would you proceed to read your statement.

A. My name is Donald L. Loftus, and I have been employed by the Western Pacific Railroad since 1952. My address is 526 Mission Street, San Francisco, California. My present position is Assistant to President in charge of the Research and Planning Section, which position I have held since 1956.

[fol. 77] Prior to this, I was a transportation engineer in the same Section. I am a graduate of Northwestern University, receiving a B.B.A. degree in 1948, and majoring in transportation.

Prior to joining Western Pacific, I spent three years with Pullman-Standard Car Division of Pullman, Inc., as research analyst and field service representative. During the same period, I was a lecturer in the Transportation Department in the Evening Division of Northwestern University.

My responsibilities include the areas of Market Research, Economic Research and Long Range Forecasting and

Planning. Presently, I have a staff of three analysts and one secretary-clerk.

In connection with this proceeding, I have been asked to develop and present certain data relating to the growth of the geographical areas involved; and data illustrating the progress made by Western Pacific in improving and modernizing its transportation plant and equipment during the past ten years. The latter program has been carried out with the prime objective of meeting the current and future transportation needs of the regions we are capable of serving, either directly or through connections.

I have prepared, or caused to be prepared under my direction and supervision, three exhibits for introduction in this case. They are true and correct to the best of my knowledge, information and belief. Briefly, they cover three [fol. 78] principal subjects:

First, Economic Growth: the rapid increase in population, consumption and production, which has characterized the Pacific Coast regional economy in recent history, and the prospects for this growth continuing into the future;

Second, Production: the economic base supporting this growth; and

Third, Western Pacific's Transportation Plant: the upgrading of Western Pacific's plant as a major link in the transportation system of the regional economy.

The statistics largely tell the story and the following commentary will therefore be brief, and designed to enable a better understanding of the exhibits.

Exhibit No. 17—Economic Growth

Unfortunately, such accepted indicators of economic growth as Gross National Product or Industrial Production, which are available on a national basis, are not computed for individual states or regions. As an alternate, this exhibit provides other statistics which describe broad trends in area development. Population is a general measure of state and regional growth. Statistics on value added

by manufacturing and farm income, while not including all sectors of the economy, nevertheless provide a valid indication of production trends. State and regional consumption patterns are accurately reflected by personal income and [fol. 79] retail sales. Taken together, these figures present a balanced picture of the growth trends within a region.

In the last 20 years, population growth on the Pacific Coast has been impressive, taking place at a rate three times that of the nation. California has led the way, its population more than doubling. The Northwest states have also been growing rapidly, at a rate almost twice that of the nation.

The population growth reflects an economic expansion which has been well diffused throughout the region. Both industry and agriculture have shared in the gains. Value added by manufacturing and farm marketing cash receipts have been both increasing at rates significantly higher than for the entire nation. To varying degrees, all three states have contributed to this expansion.

The impact of these trends on the West as a market is clearly shown by the tables on Personal Income and Retail Sales. Much of the absolute gain in dollars shown in the tables must be credited to inflation since 1940 (a 1940 dollar equals 2.10 1959 dollars) and, for this reason, the rates of increase are compared with those for the nation. In these non-inflationary terms, the growth is still impressive.

While not shown in the tables as such, the Pacific Coast states have enlarged their share of total U. S. population from seven per cent in 1940 to 11 per cent in 1960; their [fol. 80] contribution to national value added by manufacturing from six per cent in 1940 to 11 per cent in 1958; and total retail sales from ten per cent in 1939 to 13 per cent in 1958. These gains were made in a time when the nation as a whole was experiencing wide growth.

Generally accepted projections of the Pacific Coast economy foresee these growth trends continuing into the future. Two of the tables in this exhibit, those for population and personal income, include projections through 1970. In both cases the growth record established in recent history

is expected to continue. Population additions are anticipated to continue at a rate well in excess of the national average. Personal income, probably the best indicator of consumption, is also predicted to maintain its upward trend line. Note that personal income statistics 1940-1958 include a sizeable element of inflationary growth while that for 1970 is in constant 1959 dollars. As optimistic as these projections appear, in the past they have almost always erred on the conservative side. Generally accepted projections of the other measures of economic growth used in this exhibit are not available but, in my opinion, it is a reasonable assumption the same general relationships which have held in the past will continue into the future and the growth rate suggested by these projections will be general throughout the regional economy.

[fol. 81] *Exhibit No. 18—Production*

The production of California, because of its diversity, does not lend itself to description by showing the physical output figures of a limited number of industries. It is probably sufficient to cite the production statistics in the previous exhibit. In addition, those shown in this exhibit indicate that production generally from California has been increasing its share of national totals during a period when the national total itself underwent rapid expansion.

For the Northwest, because of the less diversified nature of the economy, it is possible to show general growth patterns by measuring production of a relatively small number of basic commodities. The Northwest is a major supplier to national markets for forest products, paper products, nonferrous metals, and certain agricultural commodities. These product groups account for almost all of the rail movements originating in the two-state region.

Production statistics for major components of these product groups are shown, including the 1959 relationship between Northwest production and that for the entire nation. While the Northwest share of the national market for the specific products listed ranged between nine percent

and 30 per cent in 1959, the Northwest had only 2.6 per cent of the total U. S. population in that year, emphasizing the importance of out-of-state markets.

[fol. 82] The total forest products industry output in-incluudes many products, but lumber is the basic commodity. Although production from Washington has been declining in recent years, Oregon output has more than replaced this loss and the two states accounted for almost a third of total U. S. production in 1959. Closely allied to forest products, wood pulp is the basic raw material of the paper industry. The increasing importance of the Northwest in the paper industry is clearly shown by the 152 per cent increase in wood pulp production since 1940.

The statistics on wheat and apples are included as indicative of the participation of this region in national agricultural output. Production of wheat has shown a consistent upward trend. Apple production has been trendless for many years, but Washington still remains the largest producing state for this crop. Agricultural commodities in general have shown an upward production trend.

The Northwest has long been an important factor in the national supply of non-ferrous metals. Aluminum production in 1940 was negligible; in 1959, the region supplied about one-fourth of all national needs. Copper, lead and other non-ferrous metal production in the Northwest is also important.

Exhibit No. 19—Western Pacific Transportation Plant

With the general economic growth in its service area, the Western Pacific transportation plant has been systemati-

[fol. 83] cally improved. The tables in this exhibit are divided into two general areas, road and equipment, and measure changes in specific items as indications of general improvement.

The extent of improvements to road is indicated by the consistent trend to higher grade materials and facilities. A program of rail re-laying has increased the number of track miles in heavy weight rail to almost three-fourths of the

entire system. Tie replacements have resulted in almost the entire system now being in treated ties. The portion of mileage with higher grades of ballast has been consistently increased. Bridge structures have been systematically upgraded. Not shown in the exhibit is the fact that 75 per cent of tunnels formerly timber-lined are now concrete-lined.

The capacity of equipment, both motive power available and freight cars, has been significantly expanded from both a quality and quantity standpoint. The statistics on motive power speak for themselves. Statistics shown extend back to 1954 and represent diesel-electric power only. The number of freight cars in Western Pacific's fleet has not only increased by 22 per cent since 1954, but the portion of the fleet made up of special equipped cars has increased from less than 200 cars to more than 1,800 in 1960. Of the entire fleet, almost one-third are special equipped and more than 60 per cent of these are equipped with special interior devices.

While not a recent or continuing project, it is noteworthy [fol. 84] that all mainline trackage has been under CTC or automatic block signals for almost ten years.

To summarize—the statistics, in my opinion, portray a picture of a regional economy which has been expanding, both relative to its past size and as a share of the national economy. This growth has taken place on a wide front in all three states and generally in the various sources of both production and consumption. Generally accepted projections see these trends continuing through 1970. At the same time, the capacity of the Western Pacific transportation plant has been systematically expanded apace with the regional growth.

Mr. Treanor: That concludes the direct examination, Mr. Examiner.

Exam. Wright: Are you going to offer the exhibits at this time?

OFFERS IN EVIDENCE

Mr. Treanor: I was going to offer them after cross, but I will offer them at this time.

Exam. Wright: I am going to defer ruling until after cross-examination.

Cross examination.

By Mr. Hobbs:

Q. Mr. Loftus, referring to your Exhibit 19, did you make any comparison of your Western Pacific transportation plant with any other railroads in the west?

A. No, I did not.

Q. Then so far as you know, the defendants, Union [fol. 85] Pacific, Northern Pacific and Great Northern—no, not the Great Northern—the Southern Pacific, Union Pacific and Northern Pacific's plant likewise then has been systematically expanded apace with the growth of the region that they serve in the Northwest?

A. I don't know that they have.

Q. You don't know that they don't?

A. I don't know that they don't.

Q. Why did you pick out the year 1950 to compare with the year 1955 and 1960?

A. I picked this because our program began, our improvement program began in 1950.

Q. And what was it before that?

A. (No response.)

Q. You mean it was just let slip?

A. No, we had a change in management in 1948 and '49, and the new management brought in this program in 1950. I am not too conversant with the program prior to this period. It was before my time with the railroad.

Q. Have you made any comparison of the physical characteristics of the Western Pacific with any other railroad in the region or in the Northwest?

A. Not physically.

Q. You don't know how they compare then, physically?

A. (No response.)

[fol. 86] Q. The Union Pacific, for example in Oregon and Washington, the Western Pacific in California, the North-

ern Pacific in Oregon and Washington, do you know how the physical characteristics of those roads compare with the Western Pacific plant?

A. First-hand, I do not.

Q. Well, do you know any other way?

A. (No response.)

Q. You say first-hand you do not?

A. I have heard comment that—

Q. You don't know anything—

A. —that improvements were made, but I don't know exactly what improvements were made.

Q. Well, you don't know how the physical characteristics of the Western Pacific plant compare with any other railroad out West?

A. No.

Q. I am talking about the curves and grades, and all the rest of that.

A. Well, I do know that our expenditures, percentage-wise, have been very high, as a per cent of our gross, one of the highest in the nation during this period.

Q. And that could be accounted for by the level of your growth?

A. It could.

Q. Now, then, on your Exhibit No. 18, why did you go back in making in your comparison or showing your figures [fol. 87] for 1959, why did you go back to 1940 and calculate the per cent of increase? That is 20 years ago.

A. Well, this is a judgment sort of thing. You can pick just about any year you choose.

Usually, to show growth trends, however, you should cover a wide span of years. Usually 20 years is the period selected to show trends. Anything shorter might be misleading.

Q. Well, then, does that mean that the comparisons you are making on Exhibit 19, then, are not valid?

Mr. Treanor: I object—

Mr. Hobbs: You only go back to 1950 there.

Mr. Treanor: I object to that, Your Honor, because the witness has already testified as to the reasons for his starting in 1950 in connection with his Exhibit No. 19, and no proper comparison can be made.

These figures on Exhibit No. 18 are national published figures, and the figures on 19 are directed to the physical experience of the Western Pacific plant.

Mr. Hobbs: You are just answering for the witness, and he could have said the same thing, and probably that could have answered my question.

Exam. Wright: I will overrule the objection.

Do you remember the question?

The Witness: I believe so.

On Exhibit 19, as I said, the Western Pacific improvement [fol. 88] program began in 1950. Actually, the planning was begun prior to that time, but the actual physical work began in 1950, and this is the reason for taking 1950 as a starting point on this exhibit.

By Mr. Hobbs:

Q. Well, wouldn't it seem to you more reasonable on your Exhibit 18 if you had just compared 1950 with 1959 rather than 1940?

A. (No response.)

Q. That indicates the real trend, doesn't it, at the present time?

A. I say this is a judgment sort of thing, and we could probably debate this all day as to what the proper base year would be.

Economists themselves can't agree on this point, and I would have to get into a long discussion on why '40 is not a good year.

I would say usually we use 20 years as a time span to illustrate growth, and this is my reason for so doing.

Q. Well, taking the lumber production for 1940 in Oregon, for example, at—what is it—5,202 million feet? Do you know whether 1940 was a good year when there was a lot of production or a poor one when there wasn't too much production?

A. I think it was a normal year. I don't recall anything—

Q. Well, do you know whether it was or not?

A. Not exactly, no.

[fol. 89] Q. Now, in the case of the Oregon Lumber, if you had compared 1950 with 1959, it would show quite a decrease in the production, wouldn't it?

A. It would show a slight decrease.

Q. And the same thing applies to the amount in both Oregon and Washington, isn't that true?

A. Yes.

Q. If you had taken the year 1950, you would have shown quite a decrease—

A. Yes.

Q. —rather than an increase.

A. Yes.

Q. Does that have anything to do with you selecting the year 1940—

A. No.

Q. —for the comparison?

A. I think I made myself clear as to why I selected 1940.

Q. On page 3 of your statement you say that "the population growth reflects an economic expansion which has been well diffused throughout the region."

Did you make any attempt to segregate that into the various states, for example?

A. The states involved in this proceeding?

Q. Yes.

A. Yes, it is done on the exhibit.

[fol. 90] Q. What exhibit is that?

A. I believe 17 at the very top.

Q. You couldn't, or did you break it down to areas served by the railroad?

A. No, population data are not available on this basis. They are statewide.

Mr. Hobbs: That is all I have.

Exam. Wright: Cross-examination, further cross-examination?

Mr. Farrell: No questions.
Exam. Wright: Redirect?
Mr. Burkett: I have some.

By Mr. Burkett:

Q. Mr. Loftus, what is the mainline mileage on the Western Pacific between Oakland, California, and Salt Lake City, Utah?

A. Between 920 and 24 miles, I believe.

Q. How much of that mileage is east of Keddie, California, and how much is west of Keddie, California?

A. Do you want it exact or just approximately?

Q. No, just approximately.

A. I would say slightly over 600, 650.

Q. Would be east of Keddie, California?

A. Yes.

Mr. Faye: Keddie is Milepost 280.
Mr. Treanor: May we disregard that statement, sir?
Exam. Wright: Yes.

[fol. 91] The Witness: Milepost 280, it is around 625, I believe.

By Mr. Burkett:

Q. And what is the mileage from Keddie to Bieber?

A. 112.

Q. Now, am I correct that traffic from California to Portland generally would move over the mainline of the Western Pacific to Keddie, and thence north to Bieber?

A. That is my understanding.

Q. And could the mileage then from Oakland to Bieber normally be the way I calculate it, about 400 miles?

A. Right, roughly so.

Q. And that is out of a total main mileage of, say, approximately 1,050?

A. I think it is—yes, that is close.

Q. Now, turning to your Exhibit No. 19, please, I notice there that on line 1 you state, "Percentage track miles in rail 112 pounds or heavier, 71 per cent."

Would you please state what portion of that is on the line between Keddie and Bieber?

A. I don't know specifically what portion that would be of the total, but the entire Bieber line is 112 pounds, if I am not mistaken.

Q. And let's pass down to the next 115 pounds, or heavier. Is there any 115-pound rail on the Bieber line?

A. I don't know that, the answer on that. There may be [fol. 92] some on curves, but that I am not qualified to comment on.

Q. Now, with respect to all of the items which you have shown here on your Exhibit 19, can you provide a breakdown of the statistics as they apply to the line between Oakland, Keddie and Bieber on the one hand, and the line between Keddie and Salt Lake City on the other hand?

A. This could be provided.

Q. Can you tell us now what those figures are?

A. No, I cannot. I believe one of our engineers would be more qualified.

Q. Now, referring specifically to the freight car fleet where you list total cars, is Western Pacific today a creditor or a debtor road with respect to the freight car ownership?

A. With respect to the freight cars themselves, we vary from year to year. It is very close to a break-even, I would say. We are a creditor some years, and some years a slight debtor, but I would say the balance is a creditor.

Q. Can you tell us whether you were a creditor or a debtor for the year 1960?

A. I wouldn't want to answer that. I think I would be guessing.

Mr. Burkett: That is all I have. Thank you.

Exam. Wright: Any redirect?

Mr. Treanor: No, sir.

OFFERS IN EVIDENCE

I would like to offer the Exhibits 17 through 19, inclusive. [fol. 93] Exam. Wright: Any objections to Exhibits 17, 18 and 19 for identification?

Mr. Hobbs: No, we have none.

Exam. Wright: Hearing none, they are received.

(Complainants' Exhibits No. 17, 18 and 19, Witness Loftus, were received in evidence.)

* * * * * * * *

Mr. Treanor: At this time, Your Honor, I would like to call Mr. Grant Allen.

GRANT S. ALLEN was duly sworn and testified as follows:

* * * * * * * *

While off the record, Exhibits Nos. 22 through 24 were marked for identification.

(Complainants' Exhibits Nos. 24 through 24, inclusive, Witness Allen, were marked for identification.)

Exam. Wright: Proceed with your direct examination, Mr. Treanor.

[fol. 94] Direct examination.

By Mr. Treanor:

Q. Will you state your full name, please, sir.

A. Grant S. Allen.

Q. And what is your address?

A. 526 Mission, San Francisco.

Q. Mr. Allen, by whom are you employed, and in what capacity?

A. The Western Pacific Railroad as superintendent of transportation.

Q. Briefly, what has been your railroad experience?

A. My experience covers the last 48 years as a telegrapher, and train dispatcher and brakeman, trainmaster, assistant superintendent, superintendent, superintendent of transportation, and I had charge of the railroad operations for the six companies during the construction of the Boulder or Hoover Dam.

During this period, I worked for the Santa Fe, the D&RGW, the Oregon-Washington Railroad, and Navigation Company, the Oregon Short Line, the Union Pacific, the LNSL, the Northern Pacific, and the Southern Pacific.

And I was employed for about two years on the Portland Division of the Southern Pacific as an operator and a train dispatcher, and during my experience on the Portland Division I worked as a telegraph operator at their Brooklyn Yard in Portland.

Q. How long have you held your present position, sir?

[fol. 95] Q. How long have you held your present position, sir?

A. Since 1952.

Q. Have you—excuse me.

What is the general area of responsibility for the superintendent of transportation of the Western Pacific Railroad?

A. I have charge of the, general charge of the operation of the freight and passenger trains on the railroad. The manifest department is under my jurisdiction, the compiling and making of through schedules, and employees' time tables, the claim prevention work, and the general distribution of cars is all under my jurisdiction.

Q. Mr. Allen, at what points are there presently in effect interchange arrangements between the Western Pacific, Tidewater Southern, and Sacramento Northern, with other railroad carriers?

A. I think that Exhibit No. 20 will show that more readily than I can tell it. It is a map of the Western Pacific Railroad, and it shows the interchange points between the Western Pacific and the Sacramento Northern, the Tidewater Southern, and other railroads.

Q. Mr. Allen, have you personally familiarized yourself with the interchange between various carriers, carriers—railroad carriers at Portland, Oregon?

A. Yes, sir.

Q. How recently have you personally observed the inter-

[fol. 96] change arrangements in and around Portland, Oregon?

A. I was up there in the early part of May, and I was in Portland again last week.

Q. Is that May of 1960?

A. This year.

Q. May of this year?

A. Early in April, I should have said, excuse me, early in April 1961, and I was up there last week.

Q. Now, based upon your own personal observation, would you please briefly describe the manner of interchange or the actual physical operation of an interchange between the Great Northern and Union Pacific at Portland, Oregon?

A. If you will refer to this map, this large map, to interchange a car from the Union Pacific at their Albina Yard to the Great Northern, the Union Pacific yard engines move these cars from Albina across the Willamette River on a steel bridge and bring them to the interchange yard opposite the Union Station.

At that point the Northern Pacific terminal handles the cars for delivery to the Great Northern at Guilds Lake Yard.

Q. Mr. Allen, will you also, based upon your own personal observation, briefly describe the manner of interchange or the actual physical operation of an interchange between the Great Northern and Northern Pacific at Portland, Oregon?

A. These cars can be interchanged between both rail-[fol. 97] roads at the Lake Yard.

Q. While you were in Portland, did you observe any actual interchange between Union Pacific and Southern Pacific at Portland, Oregon?

A. No, sir.

Q. Are you familiar with the manner of that operation?

A. Yes, sir.

Q. Would you please briefly describe it?

A. The interchange is effected by the Southern Pacific Yard engines. They move cars from the Southern Pacific directly to the Union Pacific yard at Albina, and they will move cars being interchanged by the Union Pacific to the Southern Pacific from Albina back to Brookland.

Q. In your opinion, Mr. Allen, is there any material difference in the manner of interchange between Great Northern and the Union Pacific or the Northern Pacific at Portland, on the one hand, and the interchange between the Southern Pacific with the Union Pacific or Northern Pacific on the other hand?

Mr. Higgins: If the examiner please, I object to that. There has been no sufficient foundation at this point. The witness merely has given a very generalized description of the switching and interchange between the respective roads there.

To lay a foundation, there would certainly have to be more detail as to distances, characteristics of movement, and so on, and I submit at this point the witness has not [fol. 98] been qualified in addition to the fact this foundation has not been laid for that type of an opinion and, therefore, I object to it.

Exam. Wright: I will sustain that objection.

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By Mr. Treanor:

Q. Mr. Allen, I would now like to direct your attention back to your explanation of your own personal knowledge of the manner of interchange at Portland, Oregon, between the Great Northern on one hand, and the Union Pacific on the other, keeping in mind, Mr. Allen, that your previous answers have not been considered to be complete enough, so please take your time and give it to us in as much detail as you can.

A. In order for the Union Pacific to deliver or interchange traffic to the Great Northern, the Union Pacific yard engines leave Albina Yard.

Q. Now, is that shown on—

A. Which is shown on the map, on the east bank of the Willamette River.

Exam. Wright: This is Exhibit No. 21 for identification.

Mr. Treanor: Yes, sir.

The Witness: Yes, sir, and they move upstream to the [fol. 99] place on the map marked as steel bridge where the cars are brought across the river and brought into a yard which is directly opposite the Union Station.

From this point, the cars are moved on the Northern Pacific terminal from the depot yard and interchanged on the Northern Pacific at Guilds Lake Yard.

By Mr. Treanor:

Q. Is that shown on Exhibit No. 21?

A. Yes, sir, further down the river opposite that Swan Island Shipyard shown on the map.

For traffic that is interchanged from the Great Northern to the Union Pacific, the reverse is true.

The Northern Pacific terminal yard engines move the traffic from Guilds Lake Yard to the depot yard, where the Union Pacific yard engines will pick up the cars and take them to Albina Yard.

Q. Now, does that complete your explanation?

A. Between the Union Pacific and the Great Northern.

Q. Now, would you please describe the interchange between the Great Northern and the Northern Pacific at Portland?

A. The Great Northern trains set on cars at Guilds Lake Yard, where they are interchanged to the Northern Pacific, and the Northern Pacific trains pick up these cars at Guilds Lake Yard.

The Northern Pacific terminal engine switches these cars and arranges them, takes them out of one train and puts [fol. 100] them into the train of the other company, and the interchange from the Northern Pacific to the Great Northern is accomplished then in the same manner in the same yard.

Q. Would you please briefly describe, or not briefly any more, completely describe the interchange between the Southern Pacific at Portland and the Union Pacific?

A. The actual physical interchange of cars is performed by the Southern Pacific yard engines. They will move cars

from the Southern Pacific's Brookland Yard, which is marked on the map opposite Ross Island, across the river on the southeast part of town.

These yard engines will move traffic from Brookland Yard through to the Albina Yard of the Union Pacific, and accomplish delivery.

For traffic moving between the Union Pacific and the Southern Pacific, the same yard engines will move the traffic from Albina Yard back to the Brookland Yard.

The Union Pacific yard engines are not used in this transfer of service.

I have been given to understand that—

Mr. Burkett: Now, just a minute, Mr. Examiner. I am going to object to this witness testifying to what he has been given to understand on this record, because it is hearsay or possibly anonymous hearsay.

Exam. Wright: I will sustain the objection.

[fol. 101] By Mr. Treanor:

Q. Don't say what you have been given to understand, Mr. Allen, what you know of your own knowledge.

A. The Union Pacific pays the Southern Pacific for this service, for the time of all of the Southern Pacific engines north of East Portland Junction, which is opposite the steel bridge.

Q. Mr. Allen, as superintendent of transportation, are you personally familiar with present operations over the so-called inside gateway, including the general condition of the route and the present schedules over that route?

A. Yes, sir.

Q. Briefly, what is the general condition of that route, by the inside gateway into Portland?

A. The portion of the route from Oakland to Keddie is a first-class piece of railroad that is wholly equipped with centralized traffic control.

The portion of the railroad on the Western Pacific from Keddie to Bieber is equipped with 112 or heavier, 112-

pound or heavier rail rock ballast, but is not equipped with either automatic box signals or centralized traffic control.

The same is generally true of the Great Northern between Bieber and Klamath Falls. They do not have block signals, but they do have heavy rail and rock ballast.

Between Klamath Falls and Chemult, the Great Northern trails operate over a joint track arrangement with the [fol. 102] Southern Pacific which is centralized traffic control.

From Chemult to Bend, there are no automatic box signals, but the route is equipped with heavy rail and ballasts.

At Bend, the traffic moves over the Oregon trunk railroad to Wishram, and that is a first class piece of railroad and is equipped with automatic box signals.

From Wishram to Vancouver, the traffic moves over the main line of the SP&S Railroad, which is also equipped with an automatic box signal and heavy rail and ballasts.

From Vancouver to Seattle, the trains are operated over the joint track of the Northern Pacific Railroad, which is double track, and automatic box signals.

The traffic from the Bieber trains is handled from these trains at Vancouver, Washington to Portland, Oregon by switch cuts of the SP&S Railroad.

For traffic that is moving from Portland to trains moving south on the Bieber route, the same SP&S switch cuts move the cars from Portland, to Vancouver, Washington, where they are placed in southbound Bieber-route trains.

Q. Mr. Allen, did you, are you familiar with the fact of whether or not there is an interchange at Portland between the Southern Pacific on the one hand, and the Great Northern on the other?

A. Yes, sir.

Q. Would you please describe in as much detail as you [fol. 103] can the manner of that interchange?

A. For traffic from the Great Northern to the Southern Pacific, the Northern Pacific terminal moves the cars from Guilds Lake Yard to the depot yard, which is across from the Union Station.

Mr. Burkett: Mr. Examiner, at this point I didn't hear the question, but I would like to register an objection.

I don't see the relevancy in this proceeding to the interchange conditions between the Great Northern and the Southern Pacific at Portland. There is no issue here raised, the way I read the complaint, concerning that interchange.

Mr. Treanor: I had not intended to ask that question until Mr. Burkett intervened.

I think now it is an important part of this case and should be brought out for the benefit of the Commission.

Mr. Burkett: Well, I do not think the Examiner would wish to take the position that our intervention broadens the issues in any way.

We are comparing the operation of through routes between the Northern Pacific and the Union Pacific with interchange at Portland, with the Southern Pacific on the one hand, with routes from the Northern Pacific and Union Pacific that interchange with Great Northern on the other hand.

I don't see any issue here between the interchange conditions between the Great Northern and the Union Pacific at Portland.

[fol. 104] Exam. Wright: I will overrule the objection.

By Mr. Treanor:

Q. You may proceed, Mr. Allen.

A. The Northern Pacific moves the cars from the Great Northern to the depot yard where the interchange is effected with the Southern Pacific.

The Southern Pacific yard engines from the Portland yard to the depot yards take these cars back to Brookland with them.

The reverse is true in the case of traffic moving from the Southern Pacific to the Great Northern. The Southern Pacific yard engines move the traffic from Brookland yard to the depot yard, where interchange is effected with the Great Northern, and the cars are then handled between the depot yard and Guilds Lake Yard, to be made up into Great Northern trains.

Q. Mr. Allen, my attention has been called to the fact that the previous series of questions in which I overlooked having you describe in greater detail the manner of interchange between the Southern Pacific and the Northern Pacific at Portland, Oregon.

Would you please describe that operation?

Mr. Farrell: Mr. Examiner, I am going to object at this point. I don't think that is an issue in this proceeding.

Mr. Treanor: If Mr. Farrell is willing to admit that the manner of interchange is not at issue, I certainly won't press it.

Mr. Farrell: I will withdraw the objection.

[fol. 105] Exam. Wright: You may answer.

By Mr. Treanor:

Q. Proceed, Mr. Allen.

A. The interchange is effected in much the same manner as with the Great Northern. The Northern Pacific yard engines handle the cars from Guilds Lake Yard to depot yard where the Southern Pacific engines take the cars to Brookland, and going north the Southern Pacific engines bring the cars from the Brookland yard to the depot yard where Northern Pacific terminal handles the cars to Guilds Lake Yard to be switched into Northern Pacific trains.

Q. Does that complete your answer to that question?

A. Yes.

Q. Mr. Allen, would you please briefly describe, this time briefly, the interchange at Bieber, California, with particular reference to the actual manner in which this is accomplished and the length of time involved in that interchange?

Mr. Higgins: Pardon me, the question isn't quite clear. The interchange between what lines?

By Mr. Treanor:

Q. Between the Great Northern and the Western Pacific at Bieber.

Mr. Higgins: All right.

A. The Western Pacific and Great Northern have in effect a pool arrangement of cabooses and locomotives that work between Stockton and Klamath Falls so that the same locomotive and the same caboose go through on these trains [fol. 106] in either direction, so that many times the interchanges are made between the two railroads only long enough, in about five minutes, which means that the train stops long enough for the engine crews to change, and as the train pulls by the incoming train crew gets off the caboose, and the outgoing train crew gets on the caboose.

Unless there are cars to be actually picked up or set out at Bieber, this interchange never takes more than 15 minutes.

Q. Mr. Allen, where is the point of interchange from the Santa Fe for traffic moving over the inside gateway?

A. At Stockton, California.

Q. Now, please describe the manner in which this interchange takes place and the length of time involved.

A. Both railroads have their own yard at Stockton. The Santa Fe's yard is Mormon Yard, and our yard is known as Stockton Yard.

Cars for the north arriving at Mormon Yard on the Santa Fe are switched out and placed on a transfer about intermediate to both yards.

From this point our yard engines pull the cars down into our yard and make them up into trains.

The total time between the arrival of the Santa Fe train in their yard at Mormon and the departure of our yard at Stockton is approximately two hours.

Q. Mr. Allen, if there should be an increase in the volume [fol. 107] of tonnage moving over the inside gateway, is the Western Pacific in a position to provide the service necessary to move additional traffic?

A. Yes, sir.

Q. Would you please state for the record the basis for your conclusion as to the readiness of the Western Pacific to meet a demand for increased tonnage?

A. If you will turn to Exhibit 22, I draw up figures of the gross ton miles handled on the Western Pacific Railroad during the four busy war years, and for the last three years.

The statement shows the gross ton miles handled east and west, and total on the Oakland-Stockton subdivision, the Stockton-Oroville division, the Oroville-Portola subdivision, and the Keddie to Bieber subdivision, which are the four subdivisions that are applicable in this case.

You will note that during the heaviest war year, which was 1945 on the western division, we are now handling approximately 75 per cent of the traffic which actually handled during the war.

For the entire railroad, we are handling about 78 per cent of the tonnage handled during the entire war.

During the war years we had no automatic block signals, except on our track, our side of the paired track. We were constructing centralized traffic control in the Feather River Canyon. The rest of the railroad did not have block signals. [fol. 108] We had only about six diesel locomotives.

The rest of the traffic was handled by steam locomotives.

Now, we are all dieselized, and we have centralized traffic control, and a much better railroad.

We have more cars available than we had at that time, and unequivocally, I can say that we are in a position to handle much more traffic than we are now.

Q. Mr. Allen, the Western Pacific, does the Western Pacific have any diesel units or cabooses in a ready reserve status?

A. As of April 1st, we had 27 diesel locomotive units, and 11 cabooses stored.

Q. Mr. Allen, is the present volume of traffic moving over the inside gateway utilizing the full capacity of the Western Pacific at its connection?

A. No, sir, it is not.

Q. In your opinion, is the Western Pacific in a position to provide additional transportation equipment and facili-

ties for traffic moving the inside gateway, should the need arise?

A. Yes, sir, we are equipped to so handle.

Q. Have you caused any study to be made of the present schedules which apply both via the inside gateway and the Southern Pacific Company to Portland?

Mr. Burkett: I will object to the question unless the inside gateway schedules are limited to operations into and out of Portland.

I think that the complaint here brings into issue only [fol. 109] interchange at Portland, so an inside gateway schedule which may exist without operations into Portland has no relevance to the issues in this proceeding and would be misleading.

Mr. Treanor: In the first place, Mr. Examiner, many of these points that are reached by the inside gateway today through our connection with the Great Northern are common points served by the defendants.

We want to show the Commission what we are doing to these points today, and I think it is pertinent to this case.

Exam. Wright: I will overrule the objection.

By Mr. Treanor:

Q. Mr. Allen, have you made such a study?

A. Yes, sir, I have set down the schedules now in effect by the various railroads from Southern and Central California, to the Pacific Northwest, which is Exhibit No. 23.

The northbound schedule on the Southern Pacific, that runs daily and handles all traffic, leaves Los Angeles at 8:00 a.m., you will note, and arrives at Portland at 11:30 a.m. on the third day.

There are connections on the Northern Pacific, Great Northern and Union Pacific that can handle this traffic to Seattle.

The same thing is true of the daily train on the Southern Pacific out of Oakland at 11:15 p.m. This train has connections with all three railroads from Portland to Seattle.

Q. Mr. Allen, are you personally acquainted with gen-
[fol. 110] erally the type of traffic that is handled on Southern Pacific's Star Pacer?

A. From their schedule instructions No. 375, the Star Pacer operates from Los Angeles to Portland with merchandise and the OFC, including traffic set out at Bakersfield, Fresno, Roseville, Klamath Falls, Chemult and Eugene, operates from Los Angeles, Tuesday, Wednesday, Thursday and Friday.

Q. Mr. Allen, are your present schedules in this territory set up to make under today's conditions a convenient connection with the Union Pacific or Northern Pacific?

A. No, sir, it is not.

Q. In the event—excuse me.

Why is that, Mr. Allen?

A. Because there is no traffic moving that way.

Q. Mr. Allen, in the event that traffic should move over that, or over those routes, are you in a position to make the necessary changes in your schedule?

A. Yes, sir.

Q. Make a more efficient and timely interchange with those carriers?

A. Yes, sir, we are.

Mr. Treanor: Your Honor, that concludes the direct examination of this witness.

Exam. Wright: Cross-examination.

[fol. 111] Cross examination.

By Mr. Hobbs:

Q. Mr. Allen, going back to your description of the inside gateway, there is a connection between the Union Pacific and the Great Northern at Bend, isn't there?

A. Yes, sir.

Q. And is there any interchange facilities there, or have you been to Bend?

A. Yes, I have been to Bend. It is a joint yard with the Oregon trunk and the Union Pacific.

Q. So that freight could be interchanged there, as well as anywhere else?

A. Yes, sir.

Q. Now, then, after you, after the Great Northern hauls that train up to Wishram, it then goes into Vancouver, I think you said, over the SP&S?

A. It goes over the Oregon Trunk, and Bend to Wishram, and then the SP&S from Wishram to Portland.

Q. Yes, that is what I should have said.

A. Yes.

Q. Now, on arrival to Vancouver, the train is then taken to the Great Northern yard, or some yard in Vancouver, isn't it?

A. That is the SP&S yard.

Q. The train is taken into that yard?

A. That is correct.

Q. And there the cars that are in the train for Portland [fol. 112] are taken out of the train?

A. Yes, sir.

Q. And where is the next move with those cars?

A. Let me explain. The train—we are talking now about a northbound train going to Seattle.

Q. Well, no, I am talking about a train going to Portland.

A. All right, okay.

The Portland cars are handled in trains going to Seattle, and I would like to describe the manner in which the cars are taken out of the train at Vancouver for Portland.

This northbound train is switched at Klamath Falls, so that all of the Portland cars are on the train just ahead of the caboose, and as this SP&S train is pulling into Vancouver yard, which turns the train north towards Seattle, the train is stopped and a cut is made ahead of these Portland cars, and uncoupled from the rear of the train, and the head-in of the train pulls into the Vancouver yard.

The SP&S switch engine comes, couples the cars on the rear of the train and goes around the other leg to Portland.

Q. That is in the Vancouver yard?

A. Yes, sir.

Q. All right, then, from there as I understood, you, then, they are transferred by an SP&S switch engine to the Guilds Lake Yard at Portland?

A. Wherever they happen to be going at Portland, yes, sir.

[fol. 113] Q. Wouldn't they go into the Guilds Lake Yard?

A. Could be, yes.

Q. How else would you get any interchange with the Southern Pacific, Union Pacific, or anybody else, if they didn't?

A. For those cars, that is where they would go.

Q. Then they go through the yard at Guilds Lake?

A. That is right, Northern Pacific terminal switches them there.

Q. Yes. And from there they are taken by the Northern Pacific terminal switch engines to the depot yard?

A. Yes, sir.

Q. From there—

A. If there were any cars interchanged, that is the way. It wasn't handled right there. There is none, you understand.

Q. This would be the method of operation?

A. Yes.

Q. Of any cars going with the Union Pacific?

A. Yes.

Q. That is what I am interested in.

A. Yes.

Q. Now, from the depot yard, then, the cars would be taken by Union Pacific switch engines?

A. That is right.

Q. Across to the east side of the River, and up to—

A. Albina.

[fol. 114] Q. Albina yard, for in-training?

A. That is right.

Q. In other words, then the cars—well, let me say this first. You also described the operation involved in inter-

changing cars to and from the Southern Pacific. They come into the Southern Pacific Brookland Yard, and they are taken by the Southern Pacific over to Albina Yard directly?

A. Yes.

Q. So then, in other words, any cars that were to be interchanged to the Union Pacific at Portland off the inside gateway would go through three yards, as compared with no yards on the interchange from the Southern Pacific to the Union Pacific. That is true, isn't it?

A. That is correct.

Q. Now, then, suppose you got some cars over the Union Pacific at Albina, and they were consigned, if anybody would be foolish enough to do it, to Spokane on the Union Pacific. Those cars then would be put in a Union Pacific train and taken to Spokane, which would result in hauling them up the south side of the Columbia River, for a couple of hundred miles, the very distance that they traveled from—

A. Wishram—

Q. —Wishram to Portland?

A. That is right.

Q. So on any cars that were consigned to a point on the [fol. 115] Union Pacific east of Portland, there would always be a backhaul of some 200 miles. That is true, isn't it?

A. If they went through that route, yes, sir.

Q. Well, how else would they go with the Union Pacific?

A. They couldn't go any other way.

Q. So all I am talking about is the Union Pacific—

A. Yes.

Q. —and so far as the Union Pacific is concerned we would always have, there would always be involved an additional haul of some 200 miles to get them back up to where they crossed the river in the first place.

A. That is right.

Q. Did I understand you correctly to say that at the present time you have no, insofar as train operation is concerned, you have no real connection with any Union Pacific eastbound train?

A. We do not have any agreed schedules with the Union Pacific, that is correct.

Q. Now, then, taking the other side of the coin, if there was any cars consigned to Seattle, turned over to the Union Pacific at Portland, you would have to go through all these yards which you and I just described to get them to Portland, to take them back out again to a point that they could reach via the Great Northern at the present time without any of that?

[fol. 116] A. Let me get your question straight, that they—

Q. Well, the Great Northern at the present time, I presume, are parties to joint rates with the Western Pacific to Seattle?

A. Right.

Q. So if the cars were routed via the Union Pacific, Portland to Seattle, you would have to go through these three or four yards to get them to us; then we take them back out again to get to the same place that they could have gone without going through any yards.

A. That is correct.

Q. Now, on your Exhibits 23 and 24, there are other Southern Pacific-Union Pacific connecting trains, there are others than you have listed on these two Exhibits 23 and 24, aren't there?

A. That is right. I took them from the Southern Pacific concensed schedules, and that is the connections that they show.

Q. Yes, but there are others?

A. Yes, sir.

Q. There are other trains that they could make connections with?

A. Yes, sir, that is right.

Mr. Hobbs: I think that is all I have, sir.

Exam. Wright: Any further cross?

By Mr. Farrell:

Q. Mr. Allen, when the SP&S train arrives in Vancouver, you stated that the cutter cars going to Portland would be taken on across into Portland?

[fol. 117] A. Yes, sir.

Q. And if those cars were going to be interchanged with the Northern Pacific, then into what yard would they be moved into?

A. Into Guilds Yard.

Q. And the interchange would be effected at that point?

A. Yes, sir.

Q. And how would that be effected?

A. The Northern Pacific terminal switch engines make them up into a Northern Pacific train.

Q. It would be through the use of the facilities of the Northern Pacific Terminal Company at Portland?

A. That is right.

Q. Now, the other cars in that train going to Seattle on the same SP&S train routed Great Northern, or the Bieber to Seattle, how could that be handled when the train arrived at Vancouver?

A. The Great Northern crews operate between Portland and Seattle. Their trains are made up and terminated in the Hoyt Street Yard, which is directly adjacent to the Union Station. Their crew would originate at the Hoyt Street Yard, and go to the Oceanic Lead at the Guild Lake Yard, and pick up any cars there, and go to Vancouver and pick up this train that came in from the south, and continue on through to Seattle.

Q. Now, the distance from Vancouver to Portland is [fol. 118] about ten miles, isn't it?

A. That is correct.

Q. So the cars that were routed to the Northern Pacific, for example, would be handled ten miles south, and then they would have to be handled ten miles north?

A. That is correct.

Q. If they were routed Great Northern, they would not have that circuity, is that correct?

A. That is correct.

Q. Now, if that car were routed to the Northern Pacific out of Portland to Spokane, now, that car would be handled similar to the Union Pacific car. It would be handled, in other words, from Wishram into Vancouver, would it not, first?

A. Yes, sir.

Q. And then it would be interchanged at Portland to the Northern Pacific, and then would move out on the Northern Pacific?

A. Yes, sir.

Q. And in fact it would have to move up through the Auburn yard of the Northern Pacific on into Spokane, would it not?

A. That is correct.

Q. Now, if that car were routed Great Northern, this would move on into Wishram, and from Wishram would move right through direct over the lines of the SP&S to Spokane, would it not?

A. Right.

Q. And you have made no comparison with the amount of [fol. 119] circuity of the mileage involved therein, have you?

A. No, sir.

Q. Would you agree with me that it is very substantial?

A. It is.

Q. Now, in showing the schedules that are set forth on the so-called inside gateway, on your Exhibits 23 and 24, that reflects the present method of handling, does it not?

A. Yes, sir.

Q. Which you have described?

A. Yes, sir.

Q. On the present traffic?

A. Yes, sir.

Q. And does not reflect the schedule which would exist if the traffic were handled back in Portland?

A. That is right.

Q. Now, have you actually observed an interchange in Portland between the Northern Pacific and the Great Northern Railroad, physically observed it yourself, in the train moves that are made?

A. I have been in that yard when they were switching cars, but I couldn't identify whether they were from one railroad or the other.

Q. The answer to my question then is "no"?

A. That is correct.

Mr. Farrell: I have nothing further.

[fol. 120] Exam. Wright: Any further cross?

Mr. Burkett: Yes, sir.

By Mr. Burkett:

Q. Mr. Allen, referring to your Exhibit No. 22, what are the train miles for the year 1960 between Keddie and Bieber?

A. Train miles, I don't know that figure.

Q. Do you have those figures?

A. I could get them. I don't have them with me.

Mr. Burkett: Mr. Examiner, at this time I would like to ask that we be furnished with the train mile figures corresponding to the gross ton miles trailing figure shown on Exhibit No. 22.

We are agreeable to those being furnished at the convenience of the complainant.

Mr. Treanor: Before I agree, I would like to know the purpose of this. What is the significance of it, before we go to a lot of work?

Mr. Burkett: I think that there are decisions which indicate that in a proceeding of this type the Commission is interested in the comparison of the operating characteristics of the allegedly preferred route and the alleged sought route, and car density per train would necessarily be the—would necessarily be and constitute one of those transportation characteristics, and it is for that reason that we make that request.

Mr. Treanor: I am not willing to provide it voluntarily, [fol. 121] Your Honor. I don't want to provide that information for Mr. Burkett to turn over to his cost department.

Mr. Burkett: It is not a question of turning it over to the cost department. It is a question of comparing train density of these two routes, and I have decisions of the Commission which would indicate that of this, information of this type is relevant evidence for the Commission to consider.

Mr. Treanor: We have other matters going that are not connected to this proceeding and, therefore, I am not willing to give it. I think you might use it somewhere else in another entirely unrelated proceeding.

Mr. Burkett: Well, I will submit for the record that I ask for the material in good faith, and we feel that it is relevant to this proceeding, and there is no showing that the information could not be made easily available.

Exam. Wright: Your request appears in the record, but I am not going to require the complainant to produce the information.

By Mr. Burkett:

Q. Now, turning to your Exhibit No. 23, Mr. Allen, am I correct that the inside gateway schedules there shown would necessarily be longer if interchange were made, if the traffic were actually carried into Portland, interchanged at Portland, and then moved out to Seattle?

A. I don't know as I am prepared to answer that question when there is no traffic moving that way now.

[fol. 122] Q. All right. Well, let us look at this train which arrives at Vancouver at 3:00 p.m.

A. Yes, sir.

Q. That train carries traffic moving into Portland where it arrives at 5:30 p.m. At what time does that traffic move out of Vancouver for Seattle today?

A. Today it moves out of there at 5:00 p.m.

Q. It leaves Vancouver at 5:00 p.m. to arrive at Seattle at 10:00 p.m.?

A. Yes, sir, that is on the Great Northern now.

Q. Yes. And what time does that train which leaves Vancouver at 5:00 p.m.—I beg your pardon.

At that time does that train which leaves Vancouver at 5:00 p.m. leave Portland?

A. About 4:00 p.m.

Q. Are these inside gateway schedules the only schedules which are regularly operated through the inside gateway?

A. We have extra trains that we operate up that route maybe about three days a week. We run extra trains besides the ones that are shown.

Q. That is, there are three extra trains a week northbound, and three extra trains a week southbound?

A. No, the schedules southbound are daily on both schedules.

Q. Yes, sir.

A. The GWS and the California, but the northbound [fol. 123] schedule, the Expeditor you will note operates only three days a week and, in addition to that, we operate another train about two more days per week.

Q. On the approximate schedule that you have there shown for the Expeditor?

A. It is a slower train. It is a local one. We don't consider it a part of a through schedule.

Q. Now, when you were describing the operating characteristics of the inland gateway, I don't think I fully understood your description of the line from Chemult to Bend. Would you elaborate on that, please?

A. It is a piece of railroad that has no block signals, but does have heavy ballasts and rail.

Q. The trains are operated on train orders?

A. Yes, sir.

Q. I suppose—

A. They are operated on train orders from Keddie to Vancouver with the exception of the centralized traffic control between Klamath Falls and Chemult.

Mr. Burkett: That is all I have. Thank you.

Mr. Farrell: Mr. Examiner, I have a question I overlooked, if you will indulge me.

Exam. Wright: Very well.

By Mr. Farrell:

Q. Mr. Allen, did you state that all the traffic of your road was—strike that.

[fol. 124] Mr. Allen, I believe you testified that your line north of Keddie, between Keddie and Bieber, did not have automatic block signals or CTC.

Is that correct?

A. That is right.

Q. You were in the room and heard the testimony of the witness Loftus?

A. Yes, sir.

Q. And he stated, and I quote from page 7 of his prepared statement:

"While not a recent or continuing project it is noteworthy that all traffic has been under CTC or automatic block signals for almost three years."

Can you explain that conflict in the testimony?

A. He had reference to the main line between Oakland and Salt Lake City.

Q. Do you not consider your line between Oakland and Keddie to be main line?

A. Secondary main line.

Q. His testimony says, "all main line." Do you then consider that line to be branch line?

A. In the reference to the railroad, as between ours—

Q. Within the company?

A. Within the company, we call it the main line between Oakland and Salt Lake City, and we call it the Northern [fol. 125] California extension of the NEC from Keddie to Bieber.

Q. You consider branch line then—

A. Well, it isn't necessarily a branch line, but it isn't a part of our main east and west line.

Mr. Farrell: I have nothing further.

Exam. Wright: Any redirect?

Mr. Treanor: Yes, sir, just one or two questions prompted by several questions on cross.

Redirect examination.

By Mr. Treanor:

Q. This may be clear in the record, Mr. Allen, but on the operation of these trains after the connection is made with the Great Northern, and the movement into Portland, now, does the Great Northern go into Portland? Are those trains Great Northern trains, or are those trains interchanged with the SP&S or the O.T.?

A. No, the cars are Great Northern cars, and they are handled between Vancouver and Portland by the SP&S for the Great Northern on a contract basis.

Q. The contract has been approved by the Interstate Commerce Commission?

A. Yes, sir.

Mr. Treanor: Thank you. That is all, thank you.

Exam. Wright: Any recross?

Mr. Farrell: One more question for the record.

[fol. 126] Recross examination.

By Mr. Farrell:

Q. Could we have the weight of the rail between Keddie and Bieber?

A. A minimum of 112 pounds. There have been some 115 changed out on curves.

Mr. Farrell: Nothing further.

Offers in Evidence

Mr. Treanor: I would like to offer the Exhibits 20, 21, 22, 23 and 24, Mr. Examiner.

Exam. Wright: Any objections?

(No response.)

Exam. Wright: Hearing none, the Exhibits 20 through 24, inclusive, are received in evidence.

(Complainants' Exhibits Nos. 20 through 24, inclusive, Witness Allen, were received in evidence.)

* * * * * * *

[fol. 127] Mr. Treanor: I will call Mr. Stratton.

F. B. Stratton was duly sworn and testified as follows:

Exam. Wright: Please be seated.

Direct examination.

By Mr. Treanor:

Q. Will you please state your full name and your business address?

A. F. B. Stratton, 526 Mission Street, San Francisco.

Q. Mr. Stratton, by whom are you employed, sir, and in what capacity?

A. By the Western Pacific Railroad Company. I am director of industrial development and real estate, and have the same title and responsibility for the subsidiary companies, Sacramento Northern Railway, Tidewater Southern Railway, and am president of the Standard Realty and Development Company.

Q. For the record, what is the Standard Realty and Development Company?

A. It is a wholly-owned subsidiary of the Western Pacific for the purpose of acquiring, developing and selling land to accommodate industries.

Q. Mr. Stratton, briefly what has been your business experience?

A. I have had 39 years of experience with the Western [fol. 128] Pacific Railroad. I have been in the same position since 1946.

Prior to that, most of my experience was gained in the traffic department.

Q. Briefly, what are the areas of responsibility for the industrial department?

A. The function of the department is primarily to obtain new industries, to locate on the railroad from which revenue gains are expected to flow.

In order to accomplish this effectively, new lands are acquired, developed and sold to the prospective new industries. Also, non-operating real properties are managed for profitable return.

I have the same responsibilities for our subsidiary companies, the Sacramento Northern, Tidewater Southern, and Standard Realty.

Mr. Hobbs: Mr. Examiner, Mr. Stratton seems to be reading a prepared statement. I wonder if we may have copies of it.

Mr. Treanor: He is not reading a prepared statement. He is reading from notes, Mr. Hobbs.

Mr. Hobbs: It looks like questions and answers to me.

Mr. Treanor: Well, they are questions and answers.

Mr. Hobbs: Do you have a copy of it we can have?

Mr. Treanor: I have my own.

Exam. Wright: I will let him proceed.

Mr. Hobbs: It is in the record.

[fol. 129] By Mr. Treanor:

Q. Mr. Stratton, do you personally participate in the negotiations for the location of industries on your lands?

A. Yes, I do. All negotiations of any major importance are reviewed by me before they are submitted to higher management for approval.

On the major subjects of considerable importance, I usually handle the negotiations completely by myself.

Q. Now, briefly what is the acreage or the number of locations which you presently have available for locating any shippers on your line in California?

A. We have approximately 4500 acres of potential industrial land, and it is located in about 30 different areas.

Q. Now, does that number or acreage vary in any material sense from year to year?

A. Not materially. The trend has been upward since the program was launched about ten or 11 years ago.

Q. Mr. Stratton, how many new industries have located on the lines of the Western Pacific and its subsidiaries during the last three full years 1958, 1959 and 1960?

A. About 100.

Q. Now, what are the various factors that, to your personal knowledge, are either determinative or important in the sale of an industrial site on your railroad?

A. Well, the proximity of markets or the proximity to [fol. 130] markets, I should say, the supply of raw material, the abundance of good labor, transportation advantages are very important. There are a number of others of less importance.

The order of importance in each one of these, however, will vary according to the specific requirements of the industry.

Q. Now, Mr. Stratton, in the location of an industry on your line, or in your efforts to locate industry on your line, are you in competition with any other carrier or carriers in the state of California?

A. Yes.

Q. Now, can you tell us more specifically the location of such areas of competition?

A. We are competitive with the Santa Fe at Pittsburg, Stockton, Modesto areas, and with the Southern Pacific at the same places and practically all of our other points in California.

Q. To your personal knowledge, has the availability or nonavailability of competitive through rates and routes played any material part in either the selection or rejection of industrial sites on your line?

A. Yes.

Q. Of the various industries which were located on your line during each of the last three calendar years, how many of these plants are also served by Southern Pacific through

switching arrangements, or otherwise?

A. About 85.

[fol. 131] Q. How many of them are served by any railroad other than Southern Pacific?

A. About 70.

Q. Now, if the parties in the hearing room should desire it, do you have available similar information for industries which located on your line prior to the past three years?

A. Yes.

Q. Are you personally familiar generally with the rates and route situation between California and the states of Oregon, Washington and Idaho?

A. Yes.

Q. During your personal efforts to locate industries on your line in California, have you ever failed to locate an industry because of the absence of joint rates and routes to points in Oregon, Washington and Idaho?

A. Yes.

Q. Can you give us specific examples of such situations, based on your own personal knowledge?

A. I have several cases in mind. One in particular was the effort to locate the Marathon Paper Company on the Tidewater Southern Line of Modesto in 1955. The industry expected to obtain much of its material to be processed through this plant from a plant at Lewiston, Idaho, on the Camas Prairie Railway, which only had routing outlets with the Union Pacific and the Northern Pacific.

[fol. 132] Because of the absence of through rates with the Western Pacific and Tidewater Southern, Marathon refused to locate on our line and chose a site on the M&ET at Modesto with open-routing privileges.

Mr. Hobbs: What is M&ET?

The Witness: Modesto & Empire Tracing Building.

Another effort was the effort to locate the Fudenna Company in Irvington in 1955. We had worked with them, and a site had been selected from our land holdings by Mr. Jim Fudenna, head of the company. However, some shipments were to be made, and had been in the past, to the Pacific Fruit and Produce Company in the Northwest,

which had branches on local Union Pacific and Northern Pacific points, and in these instances the lowest applicable rates were not available on shipments from the Western Pacific.

While this embraced a very small percentage of the total shipments, probably less than one per cent, it was important enough to influence the industry to locate on the Southern Pacific from which all routing, open routings were available.

If you wish, I can cite another instance in our efforts to locate the United Grocers at Sacramento in 1955. The receiver included in its list canned goods to move from Toppenish, Washington, a local point on the Northern Pacific.

Additionally, there were other origins which could not move at the lowest rate by the Western Pacific, and as a [fol. 133] result the industry acquired 20 acres of land on the Southern Pacific on Fruit Ridge Road at Sacramento.

A recent case was the National Homes, Inc., which located on the Southern Pacific at Newark, California. Some of its material would originate on the North Coast, from which points the through rates were not applicable.

I can cite some other cases if necessary.

Q. Well, Mr. Stratton, I would like to direct your attention to the location of the U. S. Pipe & Foundry Plant at Carpenter, California. Are you familiar with the details of that negotiation?

A. I personally handled the negotiations.

Q. Now, at the time that that industry located on your line at Carpenter, were the rates open to the Pacific Northwest on the lines of the defendants here?

A. Not via our line.

Q. Can you explain the reason, or can you explain the purchase of that property by U. S. Pipe and Foundry Company, when those rates were not available via our line?

A. Well, negotiations were made and completed rather hurriedly over a week-end when General Armstrong, I believe it was his name, was then president of the company. He was a retired Army officer, came to this area, and I

met with him and his assistants and showed them a very attractive and satisfactory site at Decoto, which Billing Station is named Carpenter on our railroad, and negotia-
[fol. 134] tions were pretty well concluded at that meeting, so that purchase of approximately 70 acres was agreed to.

Subsequently, when their traffic department was informed of this selection, they found out that all through rates to the market that they hoped to serve did not apply with the Western Pacific, and it is my information that the industry filed a complaint before the Interstate Commerce Commission against the northern carriers to have these rates authorized and published.

And I believe they were successful in having this accomplished.

Q. Mr. Stratton, in your opinion, could you have located any more industries on your line in California if the Western Pacific and its subsidiaries were able to participate in joint rates and routes between California and the Pacific Northwest on the same level as the rates now enjoyed by Southern Pacific to those same destinations?

Mr. Hobbs: Mr. Examiner, I object to that question unless counsel is referring to these two or three instances which Mr. Stratton has already developed. If he has any others he wants to talk about, let us hear them.

Mr. Treanor: No, it isn't confined to that.

Mr. Hobbs: Then I object to the question because you asked him if he ever had any other opportunity to locate
[fol. 135] industries. If he did, we want them.

Mr. Treanor: No, I haven't asked him that, Mr. Hobbs. I asked him his opinion on the ability to locate these industries.

Mr. Hobbs: Then let's have the basis for it. He is going to say, yes, that he could have located hundreds of them, but let's have the basis.

Mr. Treanor: His basis is his own personal negotiations.

Mr. Hobbs: The only basis in the record thus far is three, I believe it was, that he could have located. That is all.

Mr. Treanor: Mr. Examiner, those specific instances—

Exam. Wright: Just a minute, I will overrule the objection.

You can cover that on cross-examination, Mr. Hobbs.

A. Well, in my opinion there are many cases when we are not informed as to the reason for the industry failing to choose a site on our line.

We know that our principal competitor early in negotiations brings the rate inadequacy to the attention of the industry, and when there is any possibility of the industry's traffic being so involved, the possibility of locating such firm on our line is extremely difficult.

By Mr. Treanor:

Q. Who do you consider your principal competitor?

A. Southern Pacific.

Mr. Treanor: That is all I have.

Exam. Wright: Cross-examination.

[fol. 136] Cross examination.

By Mr. Hobbs:

Q. Mr. Stratton, on these three or four that you have detailed of industries that apparently were unable to locate themselves on Western Pacific because of the rate situation, did they file any application with the Interstate Commerce Commission to secure rates?

A. Only the U.S. Pipe and Foundry.

Q. The rest of them did not?

A. No, sir, they didn't locate on our line.

Q. That is right, but prior to breaking off negotiations did they find out whether they could get the rates that they desired into Oregon, Washington and Idaho?

A. I will have to answer that by saying my work is highly competitive, and they don't go to that extent.

Q. They didn't inquire about that?

A. They don't do that normally unless they get into a position where they have to.

Q. Do you think the pipe company was caught in that position?

A. I think they were caught.

Mr. Hobbs: That is all I have.

Exam. Wright: Any further cross?

Mr. Farrell: I have just a question or two.

By Mr. Farrell:

Q. Mr. Stratton, is it also possible that the larger facility that another carrier might have available might influence plant location, such things as car supply?

[fol. 137] A. That is right.

Q. And this might influence their location on the Santa Fe, for example?

A. It could.

Q. Or the Southern Pacific?

A. It could.

Q. And in the past three years of locating industry have you been successful, more successful than the company has been in the years prior thereto?

A. I think so.

Mr. Farrell: I have nothing further.

Exam. Wright: Any further cross?

(No response.)

Exam. Wright: Any redirect?

Mr. Treanor: No, sir.

Exam. Wright: Thank you very much, Mr. Stratton, you are excused.

(Witness excused.)

Mr. Treanor: I call Mr. Faye.

CHARLES K. FAYE was duly sworn and testified as follows:

Exam. Wright: Please be seated.

Direct examination.

By Mr. Treanor:

Q. Will you please state your full name and address, sir?
[fol. 138] A. Charles K. Faye, 526 Mission Street, San Francisco 5.

Q. By whom are you employed, and in what capacity?

A. The Western Pacific Railroad Company, assistant vice-president, freight sales.

Q. Now, briefly, what has been your business and professional experience?

A. Following my graduation from Dartmouth College in 1930, I went to work on the waterfront in San Francisco.

Shortly thereafter, when the Bieber Line was opened up in 1931, I got a job as freight salesman; subsequently, as the district agent and sales manager at Fresno, California.

At the beginning of World War II, I went to work in the operating department, and in mid-World War II was assistant to the general manager.

Following World War II, I was appointed manager of the perishable freight service, which was a combination of both operating and traffic jobs.

Later on, as assistant freight traffic manager in the traffic department, thence freight traffic manager to my present position as assistant vice president.

Q. Generally, what are the responsibilities of your present position?

A. I am responsible for the development and freight sales primarily in the western half of the United States, and also the supervision and jurisdiction over the offices on [fol. 139] the western half of the United States.

Q. Now, do you maintain any sales forces in the territory covered by this complaint?

A. Eleven offices with a force of 74 personnel.

Q. Have you generally familiarized yourself with the issues of this complaint?

A. Yes, I believe I have.

Q. Have you caused any studies to be made for the purpose of determining the major industries that are located on the lines of the defendants Union Pacific and Northern Pacific in the states of Washington, Oregon and Northern Idaho?

A. Yes, because over a period of some 30 years, it will be 30 years this fall, we have been trying to get business into that area without success, and we have in our files records of many, many of the major industries located on the rails of those carriers.

Q. Now, in the past have you made any efforts to secure traffic from or to those plants to be routed over the inside gateway through Bieber?

A. Yes, we have.

Q. And what has been the result of those efforts?

A. Well, we have been blocked from it, because the rates or prices are non-competitive.

Q. Have you caused any studies to be made as to the ability of the Western Pacific sales forces to secure traffic [fol. 140] originating or terminated on the Great Northern moving via the inside gateway?

A. Yes, I think we have been quite successful. For almost 30 years now we have been a partner in the inside gateway, and have secured traffic for that period of time. We are familiar with the locations of industries on the Great Northern Railroad in the Northwest, yes.

Q. Now, have you made or caused to be made a survey which would indicate the approximate volume of traffic moving between the Pacific Northwest and California, which you are presently unable to compete for because of the level of rates, and if you have made such a survey would you please describe how it was made and the results thereof.

A. Yes, sir. I made some notes on this, but in view of Mr. Hobbs' objections to—

Q. Well, don't you worry about Mr. Hobbs. Let me worry about him.

A. I was going to refer precisely to those, because I wanted to be precise as possible and read from them but—

Mr. Treanor: Mr. Examiner, may the witness read from the notes that he has made in connection with this particular question?

Exam. Wright: He may, as long as they are available to the other parties for cross-examination.

[fol. 141] Mr. Treanor: And they will be made available.

The Witness: As I recall the question that you asked me concerned studies made in our inability to secure traffic to this area.

We have, we started with our known losses and I designate them as known losses because as traffic originating on or delivered to industries on the Western Pacific or subsidiaries, and destined to or shipped from industries located on Union Pacific or Northern Pacific rails in the Northwest.

This is so-called known losses, because we handled only on a switch movement because of the lack of competitive rates. This is segment 1 of our survey in this case.

In the last few months we have made an on-the-ground survey which was conducted in the Northwest by one of our sales officers, accompanied in each case and in each area by our local freight sales manager or representative.

This survey was augmented by information contained in our files, which I have mentioned earlier. Approximately 109 major Union Pacific or Northern Pacific industries were surveyed or contacted.

This portion of the survey is divided into two segments, and Segment 2, which would include industries located exclusively on the Northern Pacific and the Union Pacific and/or both.

Segment 3 includes industries located on the Union Pacific and/or the Northern Pacific, but at common points [fol. 142] with the Great Northern.

The total survey, including Segments 1, 2 and 3, includes approximately 142 major industries. From this survey we estimated conservatively a potential annual movement of 25,000-plus cars of freight annually—did I say annually—annually, not now open to us, to the Western Pacific, because of the lack of competitive rates, and this is a rock-bottom conservative estimate, because far from all the shippers and receivers in the north and the south have been contacted or surveyed.

By Mr. Treanor:

Q. Does that complete your answer?
A. That completes my answer.

Mr. Treanor: That completes the direct examination of the witness.

Exam. Wright: Cross-examination?

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Mr. Farrell: Mr. Examiner, I am going to move that the figure of 25,000 be stricken from the record herein on the grounds of lack of foundation.

The Witness has referred to a study which he made [fol. 143] through the use of certain employees on the Western Pacific Railroad of industries located on the Union Pacific, Northern Pacific, and also served by the Great Northern.

There is nothing in the record showing the volume of freight originated or terminated on the Western Pacific for any particular period.

The volume terminated at any of those locations for any particular period of time, the modus operandi is not disclosed at all. I think there is a complete lack of foundation and, therefore, I move that the figure of 25,000 be stricken from this record.

Mr. Treanor: Mr. Examiner, Mr. Faye has made this study.

Now, as to the fact that the record doesn't show movement apparently, Frank, you haven't had a chance to read

Mr. Wadsworth's testimony through, because we do show movement to the extent that we participate via the inside gateway through Great Northern points.

We have shown the movement of the pipes through your movement, and we have shown you every movement we have had.

If you are concerned because Mr. Faye has not broken down each one of his segments as to his volumes, we are prepared to give you the breakdown, and we are prepared to give you the underlying documents which showed the breakdown for each point for each industry we are talking about.

Mr. Farrell: But there is no showing, either in Witness [fol. 144] Wadsworth's testimony or in the testimony of this witness so far as to the amount of traffic originating at any location on the Western Pacific.

Now, we are talking about traffic that is moving the other way apparently. I admit that the testimony of Mr. Wadsworth dealing with traffic moving the inside gateway, but this is dealing with traffic that could allegedly move by the inside gateway, and I think there is a complete lack of foundation in this record at this point for his estimate of 25,000.

Exam. Wright: I will overrule the objection. I would—I appreciate the fact that it is an estimate, and the value of it will be based on the other evidence in the record.

By Mr. Hobbs:

Q. Mr. Faye, does your—do your records that you are looking at there, do they divulge the number of shipments secured by the Western Pacific through the payment of this switching charge?

A. (No response.)

Q. I suppose what that means is that in industries located on the Northern Pacific or the Union Pacific, for example, at Spokane, which is served by the Great Northern, but you can't reach it without a switching charge, is that what you meant?

A. No, I am sorry. What I was referring to in that case was industries located on the Western Pacific or subsidiaries where rates are not applicable to points on the Northern Pacific or the Union Pacific local points, where we get [fol. 145] a switch only from—

Q. Oh, that is an origin.

A. Primary origin, yes.

Q. In California, for example?

A. Yes, yes.

Q. All right. Have you made any survey, for example, at Spokane or any other point, large point that is served by the Great Northern as to the, what percentage of the traffic that you get from industries located on the Great Northern as compared with their total traffic?

Have you made any study of that?

A. I have not, sir, no.

Q. You don't know, then, how much or what proportion of the traffic you are getting now open to you, that is, open to you, do you?

A. Well, I don't know about it here, no, and I haven't in connection with this particular case, I have not made a study, directed a study in that regard.

Q. Well, you don't want to create the impression here that you are getting all of the traffic from industries that the Great Northern, Union Pacific and Northern Pacific can serve at points where all three of them enter, do you?

A. No, sir.

Q. You are not securing all of the traffic?

A. No, sir.

[fol. 146] Q. You don't know what percentage of it you are?

A. Did I leave that impression?

Q. Well, I don't know. That is what you left with me, but I say you don't want to leave that impression?

A. Well, so I understand what you are talking about, will you tell me again?

Q. Yes. In the city of Spokane, for example, which is served by the Great Northern direct, and I presume you have rates with them now?

A. Yes.

Q. To Spokane?

A. Yes.

Q. There are industries at Spokane that are served by all three railroads, the Union Pacific, the Great Northern, and the Northern Pacific?

A. (No response.)

Q. Now, on the traffic that is involved in this proceeding, you are not getting that all via the Great Northern at the present time, are you?

A. (No response.)

Q. In other words, they are shipping to Portland and going down SP.

A. That is involved in this proceeding, definitely not.

Q. Yes. And the same thing is true at any other point that I might mention, where all three railroads serve?

[fol. 147] A. If I understand your question, they are not.

Q. Well, I don't know whether you do.

A. They are not.

Q. Now, the GN runs from Portland, for example, to Seattle, and its entry into all of the towns along the way between Portland and Seattle, including Tacoma, for example, it also, the GN also serves Spokane.

Now, aside from those cities, what other cities are you interested in reaching in the state of Washington, for example?

A. Local points on the UP and NP.

Q. Well, what ones particularly, or are there none in particular?

A. Wherever there is business destined for or received from California.

Q. Yes.

You have no particular points in mind; it is just everything?

A. Where business is available.

Q. Yes.

A. Yes.

Q. And the same thing is true in the state of Oregon on the UP?

A. West of Huntington, yes, sir, where this case is involved.

Mr. Hobbs: That is all I have, Mr. Examiner.
Exam. Wright: Any further cross?
Mr. Farrell: Yes.

By Mr. Farrell:

Q. Mr. Faye, in your responsibility as assistant vice [fol. 148] president in charge of sales, do you have responsibility over the rates within the western half of the United States, in which the Western Pacific participates?
A. No, sir, I do not.
Q. Now, when was this survey made?
A. In the last 60 days, that is, the on-the-ground survey.
Q. Now, can you tell us for any recent representative period the number of cars, freight, that originate at or terminate on stations of the Western Pacific in California that moved to the territory involved in the scope of this complaint?
A. Would you repeat that, please?

Exam. Wright: The reporter will read the question.
Mr. Farrell: Mr. Reporter, will you read the question back, please.

(Question read.)

By Mr. Farrell:

Q. Either from or to.

Mr. Treanor: Mr. Examiner, for clarification may I ask if Mr. Farrell is including Great Northern points?
Exam. Wright: Yes.
Mr. Treanor: As well as the UP and NP?

By Mr. Farrell:

Q. It would include all points, as I would understand my question.
A. I cannot answer specifically without going back to our survey and tallying.

Q. Just so we understand each other, you don't have those [fol. 149] figures now available with you on the witness stand, is that correct, Mr. Faye?

A. Yes.

Q. Now, I take it also, then, you do not have with you on the witness stand now the breakdown as between the number of cars that originate or terminate at stations of the Western Pacific in California that moved to destinations or origins within the scope of this complaint in the other three states, as between the Great Northern or as between the other defendants in the case?

A. (No response.)

Q. That breakdown you don't have, or do you?

A. Well, not a breakdown, but the overall, in reference to the total of the 25,000 figure that I made originating on or terminating on WP industries, an annual figure would amount, that is of WP and subsidiaries, moving to points where we do not have rates with the NP or the UP, would approximate 2,250 cars annually.

Originating on or terminating on WP or subsidiary lines, moving to or from NP or UP local points, where we presently do not have rates, not common points.

Q. Now, this then is moving to local points then on the NP or UP?

A. Correct.

Q. Now, this is the total number for what period?

[fol. 150] A. This is an annual estimate.

Q. Now, what do you mean by an estimate?

A. Well, we don't—because most of the segments that we took, 1, 2 and 3, and particularly because of the segments 2 and 3 which I mentioned were done on an estimated basis, only, obviously because we do not have rates with the NP and UP, and it was done on the basis of our historical record plus our discussion and our on-the-ground survey, we took all, as an estimate of the overall.

Those precise figures would be available which we could go back for 1960, and get an actual number.

Q. But you didn't go back to 1960 and get the actual number, did you, Mr. Fay, for purposes of preparing the estimate that you put in the record so far?

A. On an approximate general basis, yes, 2,000 cars.

Q. Now, this figure, now, the figure of 2,000 or 2,500 is, as I understand it, cars which you estimate the Western Pacific handles annually at stations in California that moved to or from stations on the NP and UP in the states of Oregon, Washington and Idaho that are not served by the Great Northern Railroad, is that correct?

A. Where we do not have rates, correct, competitive rates.

Mr. Treanor: Mr. Examiner, so the record may be clear on that, and I think maybe this is the reason Mr. Farrell is having trouble following the witness, he is confining his [fol. 151] answers to those specific instances where we got nothing but the switch-out of traffic that originated on our line.

The Witness: That is specifically what I am referring to here in this question with the 2,000 cars plus.

Mr. Farrell: Yes.

By Mr. Farrell:

Q. Now, as I stated it to you, that is correct, is it not?

A. Where we received a switch only for business originating on or delivered on our rails or subsidiaries destined to or originating on local points on the NP or UP where we do not have rates—

Q. And that is the 2,000 and 2,500 on an annual basis?

A. Correct.

Q. Now, you cannot tell us what the figure is for 1960, if I understand you correctly?

A. I do not have those figures available with me now.

Q. But that is available in the records of your company?

A. Yes, sir.

Q. Well, now, when you started out to make this survey, did you prepare any written instructions at that time, to your field forces?

A. We formed a basis for our surveys. We had a discussion with our people who were going to cover the area, and also with certain—

Mr. Farrell: Mr. Examiner, may my question be read to [fol. 152] the witness?

Exam. Wright: The reporter will read the question.

(Question read.)

A. Yes.

By Mr. Farrell:

Q. Do you have a copy of those instructions with you?

A. No, sir.

Q. What in substance did the instructions request?

A. (No response.)

Q. If you recall.

A. Basically to cover major points and major industries on the UP and the NP in the area under question, both as to local points, that is exclusive NP-UP points, and common points at that time determined, augmenting the information that we have built up over a period of years, the business or the traffic that would be potential to us on an annual basis moving to and from NP-UP points where we do not presently have rates.

Q. Now, did these instructions request representatives of the sales department under your supervision to contact shippers and receivers of freight at all stations served by the NP and the UP in the states of Oregon, Washington and Idaho?

A. No. It instructed our representatives to contact certain major shippers and receivers, but we did not attempt to contact all shippers and receivers at the points mentioned.

Q. And what was the total number contacted?

A. Approximately 109.

[fol. 153] Q. And were some of these shippers located at common points, such as Spokane, Seattle—

A. Would you like to have me split these between exclusive and common points?

Q. Would you?

A. Yes, sir. Exclusive NP-UP and/or NP-UP, 59.

Q. This is what you call Category 2?

A. No, this is—yes, pardon me, Segment 2, Category 2, correct.

Q. Yes.

A. NP-UP at common points, approximately 50.

Q. That is Segment 3?

A. Yes, sir.

Q. What is Segment 1?

A. The portion we were talking about before, that the business on our own railroad or subsidiaries, where we received only a switch, but moving to or from those points on the NP or UP, that is Segment 1. That is the 2,000-plus.

Q. On the annual basis?

A. Yes.

Q. Now, 50 of the 109 industries named are located then at points served by the Great Northern which you have a full line of joint rates at the present time?

A. Yes, sir.

Q. Now, were all 109 of these industries then contacted [fol. 154] by the representatives of your department, and were written reports returned to you?

A. Not entirely; as I stated in the notes that I was reading from earlier, most of the 109 were contacted, but there were many on which the information was augmented by prior information that we have been building up over a period of years on this so-called non-competitive business.

Q. Am I now to understand, Mr. Faye, some of the 109 were not contacted?

A. Correct.

Q. What number were not contacted?

A. I can't give you the exact number, sir. A very small percentage.

Q. Now, of those that were contacted, what was your sales force instructed to request of them?

A. To try to ascertain the business, the traffic, carload traffic that might be potential to the Western Pacific providing rates were available on a competitive basis from and to the points mentioned.

Q. In the discussion with the traffic representative, then, these companies that were contacted, were they requested to consider any factor other than rates?

A. (No response.)

Q. If you know.

A. I think so, yes.

[fol. 155] Q. What other factors were they instructed to consider in their meeting with the traffic representatives of these companies?

A. Car supply.

Q. What else?

A. I think those are the two primary considerations.

Q. They were to give no consideration to time in transit?

A. Yes.

Q. Did you instruct them to consider that?

A. No, we didn't specifically instruct them to consider that, primarily because we have been competing for some almost 30 years on the inside gateway quite successfully on a competitive time basis with our—

Mr. Farrell: I move that answer be stricken, Mr. Examiner, as non-responsive.

Mr. Treanor: Well, I think, Mr. Examiner—

Exam. Wright: I will let it stand.

By Mr. Farrell:

Q. Did you request them to consider claim experience?

A. Pardon? I am sorry.

Q. Did you request them to consider claim experience?

A. I didn't get the last word.

Q. Claim experience.

A. Experience?

Q. Claim experience.

A. No, sir.

[fol. 156] Q. But you appreciate, Mr. Faye, there are many factors that influence a traffic manager in the routing of freight, do you not?

A. Yes, sir.

Q. And rates is one of these things?

A. Yes, sir.

Q. Now, what was the basis, if any, for the inclusion in the survey of the 50 industries that are located at points served by the Great Northern Railway in which you have a full line of joint rates at the present time?

A. Well, the inclusion of the industries at common points was primarily because, in some cases, we were not realizing what we felt was our full potential.

Q. You mean you felt that despite the fact you had a full line of joint rates into that point, you still were not getting all the traffic that you felt you were entitled to?

A. Yes, sir.

Q. And this is a recognition that there are factors other than rates that influence the handling of traffic, is that correct?

A. Car supply is a very important one, as I brought up.

Q. Well, now, of this alleged 25,000 cars, can you tell us how many of those cars you estimate would result from these 50 industries from which you presently have a full line of joint rates as distinguished from the 59 on the other hand?

A. The split between segment 1 and segment 2, or cate-
[fol. 157] gory 1 and 2.

Q. This would be the split, as I would understand it—

A. I beg your pardon, 2 and 3.

Q. Between 2 and 3?

A. Two and 3.

Q. Yes, Mr. Faye.

A. Segment 2 would be twice as much as Segment 1—I beg your pardon—Segment 2 would be twice as much as Segment 3.

Q. Now, do you know of these 50 industries which are located at points served by the Great Northern how many of those industries were actually contacted by your sales people?

A. Not without redoing our survey which I have not got the precise number at the present time, no.

I am sorry.

Q. But if I understand your testimony, Mr. Faye, that if you have all the traffic on which you presently receive only a switch charge, as you put it, that would amount to 2,000 to 2,500 additional cars annually, is that correct?

A. Correct.

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[fol. 158] Mr. Treanor: I call Mr. Hinckle.

A. K. HINCKLE was duly sworn and testified as follows:

Exam. Wright: Have a seat, please.

Mr. Treanor: Mr. Examiner, Witness Hinckle has a prepared statement which is two and a half pages in length. We would like to request permission of the Examiner to read this as his testimony.

Copies have been distributed to the other parties in the hearing room.

Exam. Wright: This will constitute his direct testimony?

Mr. Treanor: Yes, sir.

Exam. Wright: Very well.

Direct examination.

The Witness: My name is A. K. Hinckle. My business [fol. 159] address is Lewiston, Idaho. I am General Traffic Manager for Potlatch Forests, Inc., and Vice President of the Washington, Idaho and Montana Railroad Company, a wholly-owned subsidiary of Potlatch Forests, Inc.

The Washington, Idaho and Montana Railroad Company is a Class II Common Carrier, operating 49.37 miles of main line tracks and 13.77 miles of yard and side tracks in the states of Idaho and Washington, from Lairds, Washington to Purdue, Idaho. Direct connections and interchange of traffic is made with the Great Northern Railway and Northern Pacific Railway at Palouse, Washington, and the Chicago, Milwaukee, St. Paul and Pacific Railroad at Bovill, Idaho.

The Washington, Idaho and Montana Railroad answered the complaint by stating that it is a party to certain tariffs and does participate in through routes and joint rates with the Great Northern Railway and Western Pacific Railroad to the extent it has been requested and is able to handle traffic with the GN-WP. Denial was made of other allegations of discrimination, et cetera, since the W.I.&M. R.R. is not a dominating factor in determining participation of carriers in sought routes and rates.

The Washington, Idaho and Montana Railroad is willing to participate in routes and rates sought by Complainants, subject to the concurrence of other defendant carriers.

The purpose of my testimony today actually is one of a [fol. 160] dual interest. By reason of my responsibilities with both the W.I.&M. R.R. and Potlatch Forests, Inc., I feel it is important and in the public interest to express the views as they apply to Potlatch Forests, Inc., as a shipper and receiver.

Our plant at Lewiston, Idaho, produces lumber and lumber products, pulp and pulpboard. We are served by the Camas Prairie Railroad, which is jointly owned by the Union Pacific Railroad and the Northern Pacific Railway. We do not ship any traffic off the Camas Prairie Railroad to points into California in connection with the Western Pacific Railroad via Bieber because combination rates applicable via that route are higher than the joint through rates now provided by the Union Pacific and Northern Pacific with the Southern Pacific via Portland, Oregon.

With the publication of joint through rates via Bieber, it would satisfy one of our important needs. A specific example involves shipments to Oakland, stopping in transit to partially unload at points on the AT&SF Railway between Stockton and Oakland. Today we cannot serve our customers in this manner without incurring extra costs, since neither the Union Pacific nor Northern Pacific provides rates via Portland, thence the Southern Pacific to Stockton, thence AT&SF or ATSF-WP. If competitive rates were published via Union Pacific or Northern Pacific, thence

Great Northern via Bieber, Western Pacific thence ATSF, the stopovers would be available to us without penalty. [fol. 161] Therefore, we feel there is a public need and necessity for arrangements that will make it economically possible for us to serve our customers competitively.

Mr. Treanor: Mr. Examiner, that completes the direct examination of Witness Hinckle.

Exam. Wright: Cross-examination.

Mr. Hobbs: I have none.

Cross examination.

By Mr. Burkett:

Q. Mr. Hinckle, in your direct statement, you referred to points on the Santa Fe Railway between Stockton and Oakland, at which you desired to stop in transit to partially unload.

What are those points?

A. The one I have in mind is Antioch.

Q. And have you ever requested—strike that, please.

If a joint rate were published by Northern Pacific, Union Pacific, Portland, thence Southern Pacific to Stockton, thence Santa Fe, you would have that privilege, would you not?

A. Yes.

Q. Have you ever requested the Southern Pacific-Santa Fe-Union Pacific or Northern Pacific to establish such a rate?

A. I have asked for it verbally. I haven't written them for it.

Q. When did you ask?

[fol. 162] A. Oh, several times over the last five or six years.

Q. And to whom did you direct your request?

A. Traffic representatives of the Southern Pacific.

Q. What traffic representative?

A. Portland, Oregon.

Q. What gentleman in Portland, Oregon?

A. Mr. Anderson is one gentleman. Mr.—the traffic manager—I don't recall his name right now.

Q. Have you ever made shipments via this route to partially unload at Antioch?

A. Via what route?

Q. Of the Southern Pacific from Stockton to Portland, thence Santa Fe.

A. No, the combination rates are too high.

Q. And have you made single carload shipments to Antioch?

A. In some cases, yes.

Q. I notice on your statement here you state that your problem also would be involved if there was routing available by Southern Pacific from Portland to Stockton, thence AT&SF-WP?

A. That is right, because some of our customers are on the Western Pacific and some are on the Santa Fe, and we quite often have pool cars.

Q. How would the routing exist if it were made Southern Pacific from Portland to Stockton, thence AT&SF-WP?

A. (No response.)

[fol. 163] Q. By that I mean where would the interchange be made between the Santa Fe and the Western Pacific?

A. In my particular case, it would be a switch at Oakland between the Santa Fe and the Western Pacific.

Q. And for delivery by the Western Pacific?

A. Yes.

Q. Well, would the Western Pacific need to be party to the tariff rate for that switch to be available?

A. In this particular case it would not necessarily have to be, but it would suit my purpose if they were.

Q. Well, would there be any?

A. I might route it around the other way, if that were possible.

Q. When you say route it around the other way, would you please—

A. Western Pacific-Western Pacific, and then Santa Fe.

Q. And where would the interchange be made on the Santa Fe?

A. Either at Stockton or at Oakland.

Q. Now, but assuming it comes from Southern Pacific, as you said in your statement, from Portland to Stockton, then it would be delivered, then would you have a routing in mind by which it would go Santa Fe-WP, past Stockton?

A. Now you are talking about the Southern Pacific?

Q. Yes, sir.

A. Well, in that case it would be Southern Pacific-Santa Fe.

[fol. 164] Q. Well, then—

A. To serve my needs.

Q. Yes. I notice, reading your statement again, I notice you say here, "Today we cannot serve our customers in this manner without incurring extra costs."

A. That is right.

Q. Since neither the Union Pacific nor Northern Pacific provides rates via Portland, thence the Southern Pacific to Stockton, thence Santa Fe or ATSF-WP.

A. Yes.

Q. Am I now to understand that we should delete the words "or ATSF-WP" from that statement?

A. I don't see why. I might develop a customer later on where that routing would be possible.

Q. Yes. Now, in that event, where would the interchange be made from the Santa Fe to the Western Pacific?

A. That is up to the railroad. I don't make those rates or routes. I don't know where it would be.

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[fol. 165] Mr. Treanor: I call Mr. Fuller, Mr. Examiner.

F. W. Fuller was duly sworn and testified as follows:

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Direct examination.

By Mr. Treanor:

A. My name is F. W. Fuller. I am Traffic Manager for Fisher Flouring Mills Co., whose plant and principal office are located at 3235—16th Avenue S.W., Seattle, Washington. I have been engaged in the grain and grain processing business over the past 30 years and have served as Traffic Manager of Fisher Flouring Mills Co. since 1941. In my present position, I am responsible for the administra-
[fol. 166] tion of transportation and traffic matters of Fishers.

My company operates 32 country grain elevators which are located on the lines of various defendants. These elevators, together with terminal storage facilities located adjacent to our mill in Seattle, provide a grain storage capacity of 3,850,000 bushels. The mill has a daily production capacity of 15,000 cwts., plus approximately 1,000 tons of offal and formula feeds. The mill and terminal grain elevator are located on and served directly by defendant railroads having track connections into and out of Seattle.

Fishers utilizes all forms of transportation in both interstate and local commerce. We do utilize the services of the railroads to a very great extent, and our primary domestic market is the State of California. For example, during the year 1960, Fishers shipped the equivalent of more than 1700 carloads to California via rail.

Fishers is a very heavy user of transit privileges, as our Seattle mill is located in Western Washington, our main source of raw materials is Eastern Washington, and our primary markets are in California. Due to the present rate situation, we do not have a free choice of routing, and cannot utilize the Bieber route except when our shipments

of flour and cereal products have come from raw materials originated on the Great Northern. When our raw products have originated on one of the other defendant lines, such as the Union or Northern Pacific, we cannot utilize the [fol. 167] Bieber routes because it has not been allowed to participate in the same through rates as apply between those carriers and the Southern Pacific.

The Great Northern does not serve all of the grain producing points of Eastern Washington and Northern Idaho. I believe that there are presently approximately 327 railroad grain originating stations in that area, and of that total, approximately 83 are located on the Great Northern.

We utilize the routing now available via the Bieber gateway to a considerable extent, and I am very satisfied with the service received over that route. If we could also utilize that routing further in connection with raw materials which originate on the Union or Northern Pacific railroads, our transit operations would be considerably improved. Complications now frequently arise because outbound shipments from transit at Seattle may only be covered by inbound transit credits of the Great Northern when we desire to route via the Western Pacific southbound.

Publication of the through rates from points on the Union and Northern Pacific via the "Inside Gateway" would allow us to surrender inbound transit credits of all lines without having to differentiate between origin lines depending upon the routing of our finished products into California. Naturally, this would serve to considerably improve the efficiency of our transit operations.

[fol. 168] We are almost totally dependent upon the railroads for our transportation service, although we do use other modes of transportation for a very small percentage of our business. It is my firm conviction that if we had available two competitive routes between California and points in the Northwest located on lines of the Union and Northern Pacific, we would be the recipient of improved services, and greater efficiencies from the carriers. It must be stated, however, that except for the restrictions on

routings due to the rate disparities which I have described, our present railroad service has been good.

That concludes my statement.

Mr. Treanor: That completes the direct examination.

Exam. Wright: Cross-examination.

Mr. Farrell: I have a question.

Cross examination.

By Mr. Farrell:

Q. Mr. Fuller, have you ever requested a joint line of rates from the Northern Pacific via the Bieber Railway?

A. No, sir.

Q. And you have been aware of this condition as things exist now for how many years?

A. Thirty-one years, about 31.

Q. And during that period of time, have you been a traffic manager, in a traffic manager's position with your [fol. 169] present company?

A. Twenty-five years.

Q. And do you generally request of railroads the things that you need, Mr. Fuller?

A. Yes, sir, we do.

Q. And you initiate many requests during the course of a year, do you, in your business?

A. Not many, but we do request some, yes, sir.

Q. Now, you stated that you shipped annually approximately 1700 carloads to California. Could you tell us how many of those cars moved to destinations on the Western Pacific Railroad for any recent representative period?

A. No, I couldn't give you the breakdown. It is available in my office, but I don't have it here.

Q. But the cars that did move to destinations on the Western Pacific, you used transit billing from Great Northern origins behind those shipments so that you paid a through rate, is that correct?

A. That is right.

Q. And has there ever been a time when you have sought to move a car to a destination on the Western Pacific that you haven't had transit billing from a Great Northern origin point available to put behind it?

A. Yes, sir.

Q. And when was that?

[fol. 170] A. Well, that occurred occasionally. It is usually towards the latter part of the crop season. For instance, right at this moment we are very low on certain Great Northern transit that could serve to restrict our movement outbound.

Q. Could you tell us any shipment that you made last year to a destination on the Western Pacific where you did not have transit billing from a Great Northern origin put behind it in any particular shipment last year?

A. I do not recall any last year, no, sir.

Q. And have there been times when you have had a surplus of Great Northern shipments and of Great Northern transit billing, and you have routed shipments via the Bieber Gateway that were not going to destinations on the Western Pacific over the years?

A. I don't believe I follow that. You mean moving to points beyond the Western Pacific?

Q. Yes.

A. Well, that happens all the time. We move to points along the terminus of the Western Pacific in connection with Santa Fe movements for final delivery, and the answer would be, yes, sure.

We have a surplus going at times that we can move beyond the Western Pacific's connection with the Santa Fe.

Mr. Farrell: I have nothing further.

Exam. Wright: Further cross?

[fol. 171] (No response.)

Exam. Wright: Redirect?

Mr. Treanor: Just one question, sir.

Redirect examination.

By Mr. Treanor:

Q. In connection with Mr. Farrell's question as to whether you have requested this in the past, are you requesting it now?

A. Yes, I am.

Q. Thank you.

A. I would very much like to see this route.

Mr. Treanor: Thank you.

Exam. Wright: Anything further?

Recross examination.

By Mr. Farrell:

Q. I take it then that the Western Pacific contacted you and asked you if you would come down here and testify, Mr. Fuller, is that correct?

A. Yes, sir, I was solicited to make the statement.

Q. And for that reason you have come down here and testified?

A. Yes, sir.

Mr. Farrell: Thank you. I have nothing further.

Exam. Wright: Thank you very much, Mr. Fuller. You are excused.

(Witness excused.)

Mr. Treanor: Mr. Kasen.

[fol. 172] M. A. KASEN was duly sworn and testified as follows:

* * * * * * *

Direct examination.

By Mr. Treanor:

Q. Mr. Kasen, would you please read your statement.

A. My name is M. A. Kasen, Traffic Manager of Centennial Mills, Inc., 1464 N.W. Front Avenue, Portland 8, Oregon. I have occupied this position for the past eight years and have engaged in industrial traffic work for the past 19 years, all of which has been spent with flour mills located in the Pacific Northwest. I am admitted to practice before the Interstate Commerce Commission and have appeared in both formal and informal hearings in the past.

Centennial is a corporation operating under the laws of [fol. 173] the state of Oregon; engaged in the business of buying and selling grain, manufacturing and marketing of grain products for both export and domestic consumption. California is our primary domestic market and 40 per cent of our flour milling capacity is shipped to this State.

Now, I would like to correct the third paragraph. It seems as though we have had a little change in our operation.

Centennial owns and operates flour mills at Spokane, Washington, Portland, Oregon, and has been in the milling business since 1889 in the States of Oregon and Washington. Daily milling capacity of our three mills is 12,000 cwts., which represents 18 per cent of the flour milling capacity in the Pacific Northwest.

The rest is all right as written.

Rates for all of our products shipped to California are found in Pacific Southcoast Freight Tariff 241-E, I.C.C. Number 1577. To understand our reason for supporting the Complainants, I will endeavor to briefly outline what our problem is in connection with our source of wheat in Washington and Oregon as well as the transit we apply on shipments to California.

Grain originating in the two states mentioned moves predominantly into our Spokane and Portland mills via Union Pacific, Northern Pacific, and Spokane, Portland & Seattle Railway. We do buy some grain originating on the Great Northern in Washington, but this is in very lim- [fol. 174] ited quantities simply because there are so few grain elevators located on this railroad.

All flour and millfeed we sell is based on a Portland price, plus a 44½-cent transit balance to Northern California and balance rate of 52 cents to Southern California. The through rate from the Palouse area of Eastern Washington to Northern California, is 74 cents. The paid-in rate from this same area to either Seattle or Portland is 29½ cents and the transit balance upon which we figure our flour price is the difference, or 44½ cents. The rate to Southern California is arrived at by taking the through rate from common points in Montana of $1.34, and deducting a paid-in rate to the Coast of 82 cents, leaving a balance of 52 cents.

In this proceeding, we are concerned with the 44½-cent transportation cost to reach such points as San Francisco, Oakland, Sacramento, Stockton, and San Jose. Transit is applied to these destinations originating in Eastern Washington and Oregon and Northern Idaho which reflects a balance rate of 44½ cents to us.

There are times when we are able to secure Great Northern origin wheat only to find our transit balance rate exceeds the normal one of 44½ cents to Northern California.

For example, in years past we have purchased many carloads of wheat originating on the Mansfield Branch of the Great Northern in Central Washington and along the [fol. 175] Main Line East of Wenatchee, but this transit is no longer good to us to California at a competitive balance rate of 44½ cents. We do not have any problem in securing enough Great Northern transit for Southern California destinations, because the transit applied on these flour movements represents wheat originating in Montana and most of this is on the Great Northern.

On the other hand, we are severely handicapped at times when shipments are made to Northern California destinations such as San Leandro, Sacramento and Stockton. As mentioned earlier, we have a very limited amount of Great Northern origin grain originating in Washington and when we are required to ship to some of our customers either located exclusively on the Western Pacific or, for other reasons, we find we must absorb an amount equal to 7½ cents which represents the difference between the Montana transit balance of 52 cents and the Washington-Oregon normal transit balance of 44½ cents. This is not on an occasional car, but occurs on a considerable number of cars we ship each month, especially from our Portland plant.

A study of our records shows this has averaged nine cars per month since July 1, 1960. From this same mill since July 1, 1960, our records show we shipped an average of 45 cars per month to Northern California.

Other than the nine cars mentioned, we must ignore any [fol. 176] customer request for Western Pacific routing because we do not have transit which can get us to destination at a rate of 44½ cents.

The routes sought by the Complainants would be of considerable benefit to Centennial Mills, Inc., as it would give a much greater flexibility to our transit operation, and most important of all to us would be a saving of 7½ cents per cwt. on an appreciable number of cars. If published, I am sure that Centennial Mills, Inc., would use them. In addition, it would enable us to buy wheat without the penalty which is presently being assessed on certain cars of wheat that are routed Great Northern into one of our mills.

We have just gone through a period of being assessed one cent per bushel penalty simply for the privilege of obtaining Great Northern origin wheat for proper transit, whereas, if the Union Pacific and Northern Pacific transit could be applied to Western Pacific destinations, we would have much more freedom in securing Washington-Oregon wheat without being penalized.

The penalty I have just referred to has nothing to do with the line-haul rate, but is a premium of one cent per bushel we must pay the broker if we want Great Northern origin wheat from Washington or Northern Idaho. For the next three months, or until new crop wheat, we will not be able to even avail ourselves of this opportunity and, of [fol. 177] course, will have to go back to using Montana wheat transit and paying a penalty of 7½ cents cwt. as mentioned earlier in my statement.

Mr. Treanor: Mr. Examiner, that completes the direct examination of this witness.

Exam. Wright: Cross-examination.

Mr. Hobbs: I have none.

Cross examination.

By Mr. Farrell:

Q. Mr. Kasen, on all wheat originating either on the Northern Pacific or on the Union Pacific in Idaho, Washington or Oregon, moving into Portland, the transit balance for movement beyond to destinations in Northern California is 44½ cents, isn't that correct?

A. Did you say all of the wheat—I am sorry.

Mr. Farrell: Read my question back, please.

The Witness: Yes, please.

Exam. Wright: Mr. Reporter, read the question.

(Question read.)

The Witness: No, it is not.

By Mr. Farrell:

Q. What is the fact?

A. If I can express it another way, if the rate is less than 23½ cents, the transit balance becomes higher than 44½.

Q. But isn't that the exception rather than the general rule in most cases, the inbound rate would be more than 23 cents, would it not?

A. (No response.)

[fol. 178] Q. In the great majority of the cases?

A. Well, before September 30, 1960, the answer would be, yes, but we have had another rate adjustment in the Pacific Northwest, so that to be fair about it I don't know whether I can answer it.

I would say in quite a number of cases, I would say, yes, but there again I am only guessing unless I had a tariff in front of me.

Q. Yes. Now, the situation which you complain of in the second full paragraph on page 3 of your statement, what you say there, as I understand it is, "From the Mansfield Branch on the Great Northern in Central Washington and along the Main Line east of Wenatchee," that the transit balance there, that you have to pay for movement out beyond Portland, is 52 cents rather than 44½ cents?

A. No, from these stations it ranges from a transit balance of about 47 cents to close to 52 cents.

In some places, I think it exceeds 52.

Q. All right. Now, that same territory, same general territory on the Northern Pacific, the transit balance that you would have to pay would be 44½ cents, would it not?

A. Yes.

Q. In other words, we apply the uniform transit balance throughout the state?

A. The Northern Pacific doesn't. We do as flour ship-

[fol. 179] pers, we only pick the transit that gives us the 44½-cent balance. In fact we don't record transit on the Northern Pacific and Union Pacific at times because we have enough of the other, the 44½-cent transit balance billing.

Q. Yes, but if you do record transit from any origin on the Northern Pacific in the State of Washington, if you did record it you could move beyond Portland to Northern California for no more than 44½ cents, isn't that correct?

A. Well, there is a lot of billing that on the Northern Pacific, for example, in Washington, Oregon, that the transit balance exceeds 44½ cents.

Could I give an example, or—

Exam. Wright: No.

By Mr. Farrell:

Q. Well, with the exception of Western Washington, is my statement true?

A. That the transit balance—

Q. With the exception of Western Washington from origins on the Northern Pacific, those shipments registered for transit, you could move those shipments beyond to Northern California for a transit balance of 44½ cents?

A. At our Spokane mills, yes.

Q. Now, from that same area on the Great Northern, you must pay more than 44½ cents?

A. Not from the Palouse area.

Q. From the Mansfield area, I mean the situation you are [fol. 180] talking about here in the second full paragraph on page 3.

A. Yes, that transit billing.

Q. In other words, if the Northern Pacific, under our rate situation, served that same territory, your proportional rate you would have to pay beyond would be 44½ cents?

A. From this same territory?

Q. Yes.

A. We would exceed 44½ from the Mansfield Branch and the points east of Wenatchee up to a certain point.

The Northern Pacific doesn't serve that territory.

Q. I appreciate that, but I say the way our rates are constructed in the state of Washington, if we did serve that territory you would be able to go beyond to a destination, ultimate destination, Northern California, in the Bay territory, for 44½ cents?

A. No, sir, we would not.

Q. Well, now, Mr. Kasen, if the Great Northern provided for you the same rate treatment from the Mansfield Branch, that the Northern Pacific does at origins on its mainline, for example, anywhere in the Spokane region, wouldn't your transit balance be 44½ cents?

A. The difficulty there is that the paid-in rate to the Coast is less than 23½. If it was 23½ or greater, yes, the transit balance would be 44½.

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[fol. 181] Mr. Treanor: Yes, sir, Mr. Wolgamott, please.

WALDO WOLGAMOTT was duly sworn and testified as follows:

Exam. Wright: Please have a seat.

Mr. Treanor: Mr. Examiner, Mr. Wolgamott has also a prepared statement, approximately three pages in length, and copies are presently being distributed to the parties.

I would like to request permission to have him read this as his direct testimony when the distribution is completed.

Exam. Wright: Granted.

Direct examination.

The Witness: My name is Waldo Wolgamott. I am Traffic Manager of Trinidad Bean & Elevator Company with offices at 101 Vallejo Street, San Francisco, California. We serve as exclusive sales agent for the Wallace Grain & Pea Company at Palouse, Washington.

[fol. 182] I have served as Traffic Manager of this company for the last 32 years, and in connection with my duties I have had the opportunity to testify before the Interstate Commerce Commission.

We ship freight by rail from the State of Washington to destination points in California. The Wallace Grain & Pea Company sells dried peas and lentils to customers located at Sutter and San Leandro, California. The customer at Sutter, which is ten miles west of Yuba City, is located at a station which receives service only from the Sacramento Northern Railway. The customer at San Leandro is located on a Western Pacific siding, and San Leandro is within the switching limits of Oakland on the Western Pacific.

The Wallace Grain & Pea Company uses storage in transit privileges at Palouse that are published by the

Great Northern and Northern Pacific. We experience no complications in supplying our customers at Sutter and San Leandro when the transit credits on hand at Palouse represent shipments which have moved inbound by the Great Northern. In such instances, the freight charges are based upon the through rate from the initial point of origin to the final destination in California, plus a nominal charge for the transit charge at Palouse.

As there are no through rates on these commodities applying via the Northern Pacific, Great Northern, Western [fol. 183] Pacific or Sacramento Northern routing, we do incur difficulty in moving these commodities into destinations on Western Pacific and Sacramento Northern. There have been times when customers at various points in California located on the Western Pacific or Sacramento Northern have ordered shipments of peas or lentils at a time when the only transit credits at hand at Palouse covered shipments which Northern Pacific had moved inbound for transit.

An example of this kind of shipment occurred on a shipment of peas originated at Johnson, Washington, on the Northern Pacific and stored in transit at Palouse. Subsequently, the shipment was tendered unrouted to Northern Pacific, which moved it to Oakland via Northern Pacific—Pascoe—SP&S—Portland—Southern Pacific and then the Western Pacific switched it from Oakland to San Leandro.

The Western Pacific levied a charge of $71.03 for its switching service based upon the published switching charge of $1.41 per net ton for 100,750 pounds. Southern Pacific, which moved the car in line haul service to Oakland, refused to absorb the Western Pacific switching charge. The Southern Pacific's refusal was based upon its tariff provision which provides that it would absorb connecting lines' switching charges only on "competitive" traffic. This traffic was not "competitive" because there were no through rates from Johnson, Washington, to San Leandro, applying over [fol. 184] the Western Pacific.

The situation at Sutter, California, served only by Sacramento Northern, is even more serious. Today the lowest

rate applying from Johnson, Washington, to Sutter, California, is a combination rate which is higher than the through rate provided for on shipments which originate at nearby points on the Great Northern and, because of the location of Sutter, of course, the penalty which we pay when the traffic originates at points other than the Great Northern, is higher than the switching charge which we are penalized at San Leandro.

There is no question in my mind but that we would route a considerable number of shipments to Sutter from points on the Northern Pacific through Bieber if we had available the same rates as are applicable from origins on the Great Northern. When we have used the Bieber gateway in connection with service on the Great Northern and Western Pacific, we have found such route to be fully satisfactory.

Mr. Treanor: That completes the direct testimony, Mr. Examiner.

Exam. Wright: Cross-examination.

Mr. Hobbs: No questions.

Cross examination.

By Mr. Farrell:

Q. Mr. Wolgamott, in the 32 years that you have been traffic manager of the company, have you ever requested the Northern Pacific to publish and join the publication of [fol. 185] basis of rates which you here seek on the basis of this prepared statement you have now read into the record?

A. To my knowledge, I have not.

We are a branch of a concern out of Denver, Colorado, and they may have initiated something back there. It has only been in the last two or three years that we have had occasion to use this particular routing.

Q. During that period of time have you requested the other organization to initially request the rates?

A. Formerly, I did not.

Q. And did you decide to become a witness when you were solicited by the Western Pacific?

A. That is correct.

Mr. Farrell: I have no further questions.
Mr. Burkett: I have some.

By Mr. Burkett:

Q. What is the name of your parent company at Denver, Colorado?
A. The Trinidad Bean & Elevator Company.

Mr. Burkett: That is all the questions I have.
Exam. Wright: Any further cross?

(No response.)

Exam. Wright: Any redirect?
Mr. Treanor: Just one question.

Redirect examination.

By Mr. Treanor:

Q. Would you like to request the rates now?
[fol. 186] A. Yes.

Mr. Treanor: Thank you.
Exam. Wright: Any further questions?

(No response.)

Exam. Wright: Thank you very much, Mr. Wolgamott. You are excused.

(Witness excused.)

Exam. Wright: Call your next witness.
Mr. Treanor: Mr. Kunzmann, please.

N. C. KUNZMANN was duly sworn and testified as follows:

Exam. Wright: Have a seat, please.
Mr. Treanor: Mr. Examiner, like the other witnesses, Mr. Kunzmann has a prepared statement which is being distributed. I would like to request permission for him to read this statement as his direct testimony in the proceeding.

Exam. Wright: Granted.

Direct examination.

By Mr. Treanor:

Q. Wait until it is distributed.

(Short pause.)

A. My name is N. C. Kunzmann. I am Traffic Manager of the Pacific Coast Paper Mills located at Bellingham, Washington.

I would like t[illegible]ake a change here. Pacific Coast Paper Mills is now a division of Puget Sound Pulp and Timber located at Bellingham, Washington.

[fol. 187] I have been with this company for the past 20 years and have been Traffic Manager for the last ten.

Our plant at Bellingham is located on the lines of the Great Northern, but we are also served by the Northern Pacific through switching arrangements. We ship paper and paper articles to San Francisco, Los Angeles, and other points in California in an approximate volume of 12,000 tons annually.

We are using the service of the Western Pacific through a routing with the Great Northern via Bieber. Our total shipments are approximately 780 to 850 cars annually to California, via all routes.

We prefer to ship via the Bieber Gateway as we are located on the Great Northern and the service via this route has been good. Sometimes, however, we do run into difficulty in the question of car supply, and at such times it is necessary for us to request cars from the Northern Pacific.

It is our company's policy to provide a line-haul to the railroad which furnishes the equipment. Consequently, when we request cars from the Northern Pacific, we route the traffic via Northern Pacific, Portland, Southern Pacific, and this forces us to route traffic via the Southern Pacific Company at times when our definite preference is to use the Bieber route. Of course, physically, we could route the traffic Northern Pacific, Portland, Great Northern and

thence via Bieber route but the rate difference is too great. [fol. 188] Frankly, we have found that the service provided by the Great Northern and Western Pacific over the Bieber route is more dependable than the service of the Southern Pacific via Portland.

It has been our experience that we save one day's delivery service when we move via the Bieber Gateway to Northern and Southern California. During car shortages on the Great Northern, we do use on occasion motor vehicles and our transportation costs in such instances are considerably increased. If the Northern Pacific were to join in the through rates here sought, we could use their cars, give them a line haul via the Bieber Gateway, and both facilitate or retain our quicker delivery schedule and not have to pay the considerable penalty which is present in today's rate schedule via such a route.

Mr. Treanor: That completes the direct examination of this witness, sir.

Exam. Wright: Cross-examination.

Cross examination.

By Mr. Burkett:

Q. Mr. Kunzmann, you appreciate, do you not, that the rates which are here sought necessitate an interchange at Portland which would necessitate traffic from your plant going through the Portland yard?

A. I realize that.

Q. And do you know how the time and service by going [fol. 189] through the Portland yards on the Bieber route would compare with the service by Northern Pacific-Southern Pacific?

A. Actually, no.

Mr. Burkett: That is all I have.

Exam. Wright: Any further cross?

By Mr. Farrell:

Q. Mr. Kunzmann, in the years that you have been connected with this company, have you ever requested the Northern Pacific to join in through rates through the Bieber Gateway?

A. Verbally, yes, many times.

Q. Have you ever made any written request?

A. No.

Q. Have you ever docketed any proposal?

A. You mean by request to Northern Pacific?

Q. Yes.

A. No.

Q. Have you ever contacted Mr. Davis who sits here in this room?

A. Personally, no.

Mr. Farrell: Thank you, I have nothing further.

Exam. Wright: Any further cross?

(No response.)

Exam. Wright: Redirect?

Redirect examination.

By Mr. Treanor:

Q. Would you know Mr. Davis if you saw him?

[fol. 190] A. I have to admit, no.

Mr. Treanor: Would you mind pointing him out, Mr. Farrell?

Mr. Farrell: Yes.

Mr. Davis, would you stand up, please?

(Applause.)

By Mr. Treanor:

Q. Mr. Kunzmann, are you willing to discuss this matter with Mr. Davis now that you have met him?

A. Yes.

Recross examination.

By Mr. Farrell:

Q. But up to the present time you have not discussed this matter with Mr. Davis?

A. No.

Q. And you decided to become a witness when you were solicited by the Western Pacific, is that correct?

A. That is correct.

Mr. Farrell: I have nothing further.

Exam. Wright: Anything further?

Mr. Treanor: No, sir.

Exam. Wright: If not, you are excused, Mr. Kunzmann, thank you very much.

(Witness excused.)

Exam. Wright: Do you have another witness, Mr. Treanor?

Mr. Treanor: Yes, sir. Mr. Cox.

JOHN M. Cox was duly sworn and testified as follows:

[fol. 191] Exam. Wright: Please be seated.

Mr. Treanor: Mr. Examiner, Mr. Cox, like the other witnesses, has a prepared statement, and I would like to request that he be permitted to read his prepared statement after the distribution has been completed.

Exam. Wright: Granted.

Direct examination.

By Mr. Treanor:

Q. Mr. Cox, would you please read your statement.

A. My name is John Cox. I am Purchasing Agent for the American Pipe & Construction Company, Portland,

Oregon. I have been employed by that company for a period of 15 years, and virtually all of that time has been spent in the traffic and purchasing departments. My company is interested in this proceeding and I have been authorized to appear at the hearing for the purpose of explaining our situation.

American Pipe & Construction Co. is engaged in the business of fabricating various iron and steel articles at Portland, Oregon. After fabrication, we ship the finished products by rail to points in the Pacific Northwest area north of Portland.

We purchase the steel raw materials which we use in our fabrication at various points, including Kaiser, California. The seller at Kaiser is served by The Atchison, Topeka and Santa Fe Railway Company, and the Southern Pacific Company.

[fol. 192] When we move our Kaiser, California, purchases of iron and steel to Portland via Southern Pacific, we are able to fabricate in transit and ship the products to points beyond via either the Great Northern, Union Pacific or Northern Pacific. Through rates apply via Southern Pacific through Portland to points on all the northern lines mentioned.

We do not ship all of our steel from Kaiser to Portland via Southern Pacific, because we like to give the Bieber route some of our business. Our average shipments from Kaiser to Portland via this route are approximately 25 cars a year. It should be understood, however, that as we are in a jobbing business, there is a considerable variation from year to year in the number of carloads so shipped.

We have no complications in our transit operations when we ship into Portland from Kaiser via Bieber as long as our customers at points beyond are located at stations served by the Great Northern. We have through rates to all points needed on that line. Our principal difficulties in the past operations of our fabricating in transit have arisen from the fact that we do not have through rates via Bieber to points on the Northern Pacific or Union Pacific.

There are many times when the final destinations of the fabricated products are not known at the time when we ship the raw materials into Portland for transit. Not all our customers in the Northwest are served by the Great [fol. 193] Northern. Consequently, we have to keep a constant check on these inbound movements to Portland to be sure that we are prepared to supply customers located at points beyond on the Northern Pacific or Union Pacific.

We are in trouble when situations develop where customers are on the Northern Pacific or Union Pacific and the only transit credits that we have are for inbound shipments of steel to Portland via Bieber. There are no through rates from Kaiser to points on those lines, so the freight charges would have to be based upon combination rates. It would certainly be to our advantage to be relieved of the present complexities in our transit operations, which have been brought about by the failure of the lines to provide us with the rates we need.

The lack of rates to points in the Northwest on the Northern Pacific and Union Pacific has also prevented us from moving as much of our tonnage via Bieber as we would like. I am sure that we would use these rates if published. We have found that the service via the Santa Fe, Western Pacific and Great Northern route is good and desire to continue using such route.

Mr. Treanor: Mr. Examiner, that is the direct testimony of this witness.

Exam. Wright: Cross-examination?

Cross examination.

By Mr. Burkett:

Q. Mr. Cox, if you shipped all of your shipments from Kaiser to Portland via Southern Pacific, you wouldn't have [fol. 194] any of these transit complexities to which you refer, would you?

A. I understand we would on some points on the Great Northern, sir. I have been given to understand that is right.

Q. What points on the Great Northern?
A. Points such as Wenatchee, and that area.
Q. Do you mean to say there is no through rate by the Southern Pacific-Portland-Great Northern-Wenatchee?
A. I may be wrong.

Mr. Burkett: That is all I have.
Exam. Wright: Any further cross-examination?

(No response.)

Exam. Wright: Any redirect?
Mr. Treanor: No, sir.
Exam. Wright: Thank you very much, Mr. Cox, you are excused.

(Witness excused.)

Mr. Treanor: Mr. Stoll is our next witness, sir.

Robert Stoll was duly sworn and testified as follows:

Exam. Wright: Please be seated.
If you are making the same request regarding this witness it is granted.

(Laughter.)

Mr. Burkett: The reporter won't like it.

[fol. 195] (Laughter.)

The Witness: Are we ready?
Exam. Wright: Just a minute, until he gets through.

(Short pause.)

Direct examination.

By Mr. Treanor:

Q. All right, sir.
A. My name is Robert Stoll. I am Traffic Manager of H. J. Stoll & Son, Portland, Oregon. We are in the business of buying and selling grain and grain products, in-

cluding cottonseed meal. We ship cottonseed meal from points in California, including Fresno and Bakersfield, California, to various points in the Northwest. When our customers are located at points on the Great Northern Railway, we have shipped the traffic by the Santa Fe, Western Pacific, Great Northern route via Bieber. On shipments of cottonseed meal from Fresno or Bakersfield to points in the Northwest which are located on the Northern Pacific and Union Pacific, we have only one route available to us and that is Southern Pacific through Portland, Oregon. Examples of such destinations are Sumas, Olympia and Yakima, Washington, and Hermiston and Pendleton, Oregon.

We feel that we should have both routes available with the same rates. This, we believe, would eliminate delay that we now experience from having to depend upon the car supply of only one railroad, namely, the Southern Pacific Company, when we desire to reach destinations on [fol. 196] the Northern Pacific and Union Pacific. Primarily, these delays arise when Southern Pacific Company is unable to furnish covered hopper cars at the time that we need them. With routes available to us, we could rely upon both the Santa Fe and Southern Pacific for this equipment. It is my opinion that with the equipment resources of both railroads available, we would save many orders which we now lose because the customers demand immediate service. I believe it is also apparent that such a situation would help to reduce customer irritation and dissatisfaction caused by such delays.

Mr. Treanor: That completes the direct examination.

Cross examination.

Mr. Farrell: No questions.

By Mr. Burkett:

Q. Mr. Stoll, isn't it a fact that there are open routes now available by Santa Fe via Bakersfield to Stockton, thence by Southern Pacific from Stockton to Portland?

A. I believe so.

Q. Yes. And is it not also a fact that there are open routes available by Santa Fe from Fresno to Stockton, and thence by Southern Pacific from Stockton to Portland?

A. I believe so.

Mr. Burkett: That is all.

Exam. Wright: Any further cross?

(No response.)

[fol. 197] Exam. Wright: Any redirect?

Redirect examination.

By Mr. Treanor:

Q. Do you want to continue to rely only on the Southern Pacific?

A. No.

Mr. Burkett: Will you please read the question?

(Question read.)

Recross examination.

By Mr. Burkett:

Q. That is what you desire to have, is to have the privilege of originating traffic on the Santa Fe at Fresno and Bakersfield?

A. (Witness nods head affirmatively.)

Q. Your answer is yes?

Exam. Wright: What was the answer?

The Witness: Basically, yes.

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[fol. 199] C. V. DONALDSON was duly sworn and testified as follows:

* * * * * * *

Direct examination.

The Witness: My name is C. V. Donaldson. I am Traffic Manager of Consolidated Dairy Products Company located [fol. 200] at Seattle, Washington. I have been engaged in my present position for 24 years and have spent 24 years in traffic.

Our company ships butter from Seattle, Washington to San Francisco and also to Los Angeles and other points in Southern California. Our plant is located on the Northern Pacific at Seattle, but we are accessible to the Great Northern through switching.

We have found that California is a natural and important market for our product as the Ex Parte general freight rate increases have served to gradually force us out of markets in the Middle West. We have been shipping traffic via Bieber in connection with a Great Northern and Western Pacific routing and I have found that such service is good.

As we are located on the Northern Pacific, it is necessary that on traffic which is routed via the Great Northern, we must rely upon the Northern Pacific to switch the cars to the Great Northern at Seattle. This switching service today takes about 24 hours, but I have found that once the traffic is given to the Great Northern, it is handled in such manner as to make up for the car delay involved in the original switching at Seattle.

If the Northern Pacific would participate in the routings via Portland and Bieber, we could save delay in switching by giving the Northern Pacific a line haul as far as Portland. I believe it is important that we have additional [fol. 201] inter-railroad competition south of Portland. It has been my experience that where there is competition between the carriers, it serves as an incentive to excel in service matters and we believe this would be beneficial to our company.

We are in favor of the creation of additional competitive routes between the Pacific Northwest and California for another reason. It would increase the flexibility of rail service by affording us a wide choice of routes for such purposes as stopovers in transit and diversion and reconsignment.

It is my understanding that the Western Pacific is also proposing competitive rates and routes from Ellensburg, Washington, to California via Northern Pacific-Portland-Great Northern, thence over the Western Pacific beyond Bieber. Such a result would be beneficial to us as the Northern Pacific has published storage and repacking in transit privileges at Seattle on butter from Ellensburg.

Such a publication would permit us to ship south of Seattle under storage in transit with routing via Bieber, which is something we cannot do under today's conditions. As of today, there is no through rate applying from Ellensburg to California through Seattle, thence via the Northern Pacific and its connections through the Bieber Gateway.

By Mr. Treanor:

Q. Now, sir, have you ever asked the defendant lines for the establishment of the rates that are here sought?

[fol. 202] Mr. Burkett: I would like to have the question clarified to indicate what defendant lines.

Mr. Treanor: It includes the defendants that are working with you, your client, Mr. Burkett, the Northern Pacific and the Union Pacific and their connections, and it does not include the friendly defendants, Great Northern, Santa Fe.

Mr. Burkett: Thank you, sir.

The Witness: I have asked verbally, but not by formal application for such privilege.

By Mr. Treanor:

Q. Now, sir, have you recently made it a point to familiarize yourself with the manner in which your traffic is

actually handled on a movement from the Northwest through Portland?

A. Yes, I have made a very thorough study of our time in transit of all cars by both Great Northern and Western Pacific routing, and over the Northern Pacific-Southern Pacific, as a result of recent meetings on the so-called merger study.

I have been at a number of meetings during the last half of last year on this subject and was interested in determining if we could get better service now rather than to wait for a merger.

The result of that study has been to familiarize myself with car movements and with the time in transit of the cars.

Q. And what did that study show?

A. It showed that we were wasting 24 hours in Seattle by [fol. 203] either route, and that we were wasting roughly 24 hours in Portland via the Northern Pacific-Southern Pacific route.

Q. Now, just for clarification, when you talked about your studies being made in connection with a merger, which merger application do you have in mind?

A. I am speaking of the merger of the Santa Fe-Western Pacific or the application of the Southern Pacific to the merger of the Western Pacific.

Q. And, sir, just so the record may be clear, did we solicit your help in this case?

A. Yes, you did, and I am grateful for it.

Mr. Treanor: Thank you. That concludes the direct.

Exam. Wright: Cross-examination.

Cross examination.

By Mr. Farrell:

Q. Mr. Donaldson, during the entire 24-year period that you have been traffic manager of this company, have you been shipping butter into California?

A. No.

Q. When did this movement commence?

A. When we built the Los Angeles plant, and I don't recall the year exactly, but it would be roughly 12 years.

Q. And during this period of time has this movement been relatively constant?

A. No, it has increased each year.

Q. Am I to understand then that 1960 was the largest [fol. 204] movement that you have had in the past 12 years?

A. I didn't prepare the data on the relative basis, but it is a fair assumption, yes.

Now, normally when you seek additional routing, or when you seek a change in rates, do you customarily in your business docket a proposal, make your written request as to what you want so that the carriers have a written record of it?

A. (No response.)

Q. Is that the customary manner in which you operate or not?

A. No, it isn't.

Q. You customarily handle all your requests for rates and routes verbally?

A. Not all.

Q. In cases where you want something that is of some importance to your company, do you generally make a written record of it and give a written record to the company?

A. No, not necessarily.

Q. Have you made any study of the volume of the traffic going to your Los Angeles plant that moves via the Portland-Southern Pacific route, or that moves via the Bieber Gateway, as to the percentage breakdown as between the two routes?

A. I don't completely understand your clarified question there. May I have it repeated, please?

Exam. Wright: Will the reporter read the question?

(Question read.)

[fol. 205] The Witness: Yes, I have.

By Mr. Farrell:

Q. At what period of time did this encompass?

A. The study which I previously mentioned covered 1959 and 1960.

Q. Now, presently from your Seattle plant, you have the same line of rates applying both ways, do you not?

A. That is correct.

Q. And what did that breakdown show, percentagewise?

A. Well, roughly one-third of the cars are moved over the Western Pacific, and the other two-thirds have moved over the Southern Pacific.

Q. And has that percentage been relatively constant for some period of time, if you know?

A. No, it is happenstance.

Q. Now, what do you mean by happenstance?

A. It is my judgment as to which carrier I will use and for that reason I may ship for six months with one carrier, with none to the other, and then may divide the tonnage equally for a period of time or as in the present case in which I am trying to find the service to get cars out of Seattle more rapidly, in the present case I am routing exclusively with Great Northern-Western Pacific and have been for roughly three months.

Q. Did you commence to route by Great Northern-Western Pacific after you had been contacted by the Western Pacific?

[fol. 206] A. No.

Q. When did you first commence, then? What was the reason for it?

A. The reason was to see if by giving the Great Northern each car each day through a period of time that they could set up the operating mechanics of moving that car off of our siding to the interchange and into an earlier train, and by so doing we have improved the service from 24 hours to roughly 16 or 18 hours in Seattle.

In other words, the cars formerly were averaging 24 hours at Seattle, and by introducing and routing and staying with it until we worked out all the bugs, we now have

a service in which cars are getting away within 16 or 18 hours after loading.

Q. Are you aware of the changes that have taken place to reduce this time by six to eight hours?

A. Yes, I have.

Q. What are those changes?

A. The mechanics of it are simply that the car will be pulled, taken to an interchange and put into an 11:00 a.m. train out of Seattle instead of being held until 4:00 or 5:00 o'clock that day after loading.

From an operating standpoint, I don't know what the mechanics of the movement of the trains is, no.

Q. You are not familiar with that?

[fol. 207] A. No.

Q. But this is what is now taking place?

A. That is right.

Q. And this has resulted in improving the service to the extent you mentioned?

A. And I don't mean to imply by this that the Northern Pacific could not do the same.

Q. Now, are you familiar with the switching operation at Portland, Oregon?

A. No.

Q. Do you, to your knowledge—

A. No, only to the extent of the testimony that was given yesterday and the amount of time that it takes to put cars through Portland.

Q. Now, am I to understand from that, then, that the basis of your opinion of the 24 hours in time wasted at Portland is the information which has been furnished to you by other people?

A. By the carriers themselves.

Q. By the carriers themselves?

A. That is right.

Q. And you have relied upon their statements?

A. That is right.

Q. And if I would ask you the same question with reference to Seattle, I would have the same answer?

[fol. 208] A. Yes.

Mr. Farrell: I move that his response with respect to 24 hours delay at Portland be stricken from the record as hearsay.

Exam. Wright: It is hearsay, but I will let it stand.

By Mr. Farrell:

Q. Could you give me the volume of your movement that originates Ellensburg, that moves into your Seattle plant, and hence on into destinations in California?

A. Now, I don't have those figures with me. I would be glad to furnish them later if you wish.

Q. But this is a transit operation at Seattle?

A. There is no transit operation being carried on at the present time.

Q. When this traffic is routed Northern Pacific-Portland, Southern Pacific beyond, do you have a transit rate available to you?

A. Yes.

Q. Through rate?

A. Yes.

Q. And are you transiting on the basis of that through rate at the present time?

A. No.

Q. And you have had that rate available to you for a number of years?

A. Yes.

[fol. 209] Q. And during the past three months am I to understand that all your traffic has been routed Great Northern beyond Portland via the Bieber Gateway?

A. Yes.

Q. So you have made no comparison then during this period of time of the service available via both routes?

A. In this period of three months, no.

Q. And you have found that once you gave them all your traffic that the service improved, is that correct?

* * * * * * *

A. Yes, the service improved.

Mr. Farrell: I have nothing further.

By Mr. Burkett:

Q. Now, today you have these two routes available, one by the Great Northern from Seattle to Bieber, thence Western Pacific, and the other by Northern Pacific to Portland, thence Northern Pacific, is that right?

Mr. Hobbs: Southern Pacific.

[fol. 210] By Mr. Burkett:

Q. Thence Southern Pacific?

A. That is right.

Q. Now, do you have—does this 24-hour delay at Portland to which you have referred apply to the traffic which is today moving by Great Northern from Seattle to Bieber?

A. No, because it doesn't go into Portland.

Q. Now, in reaching the conclusions that you have expressed, have you given any consideration to whether this requested route of Northern Pacific-Portland, Great Northern, will require more time or as much time as the traffic which today moves Northern Pacific-Portland-Southern Pacific?

A. I have given a great deal of consideration to it, and I can see no reason why Northern Pacific-Great Northern-Western Pacific, would take any more time than the present Great Northern route has taken, because I am quite sure in my own mind that once the route is established that the carriers will do the necessary in making the proper interchange.

Q. Now, by proper interchange, you mean an interchange at Vancouver rather than interchange at Portland?

A. Yes.

* * * * * * *

[fol. 211] CLIFFORD WORTH was duly sworn and testified as follows:

Direct examination.

By Mr. Treanor:

Q. Would you please state your full name, sir?

A. My name is Clifford Worth.

Q. And by whom are you employed, sir, and in what capacity?

A. I am supervisor of traffic analysis, Fibreboard Paper Corporation, 475 Brannan Street, San Francisco.

Q. Mr. Worth, has the Western Pacific solicited your help in this proceeding?

A. No, I volunteered to appear in this proceeding.

(Applause.)

Mr. Burkett: Eager beaver.

Mr. Treanor: Mr. Examiner, Mr. Worth, on behalf of his client, has requested that he be permitted to make an extemporaneous statement. It is not prepared, but he wants [fol. 212] to explain for the record the interest of his company in this proceeding and the reason for their appearance.

I would like to request that we ask Mr. Worth to state the position of his company and the reasons therefor.

Exam. Wright: Very well. Subject to any objections that may arise during his statement.

Mr. Burkett: Well, Mr. Examiner, Mr. Worth is experienced in Interstate Commerce Commission matters, I know, and if he is going to read a typewritten statement then I think we ought to have copies.

The Witness: I don't intend to read anything.

Mr. Burkett: Thank you.

Exam. Wright: Proceed.

The Witness: Mr. Examiner, I am here appearing on behalf of Fibreboard Paper Corporation simply because I believe it would be to the company's advantage to have ac-

cess of additional routing via Bieber in connection with the Pacific Northwest-California.

And one of the principal reasons why I believe this to be true is that each fall there is a period of car shortage in California where the railroads that serve our different plants are unable to fulfill our entire car requirements, and this problem of car shortage is considerably more acute at those of our plants that are served by only one railroad, as compared with those plants that are reached by two or [fol. 213] more railroads, thinking particularly about our plant at Stockton, California, which ships a sizeable volume to the Pacific Northwest each year.

For all practical purposes, there is only one routing available on traffic to the Northwest, which is via the Portland route; hence we are able to call upon the Southern Pacific Company for cars and we believe that if an additional routing via Bieber was available that we would then be able to draw upon the additional car supply of the Western Pacific Railroad, with the end result that we would be able to ship more of our traffic by rail to the Northwest than we are able to today during these fall peak shipping seasons.

I believe that we would be able to utilize rail for much of the traffic that now moves by truck to the Northwest caused by these deficiencies in car supply.

Part of our problem is that we manufacture shipping containers for perishable products, and our customers require their shipping container material in conformity with their own packaging schedules, so there isn't time for delay.

Urgencies during these harvest seasons is the keynote of our operation, and if we can't get equipment that day we want it, then the shipments move by truck.

I believe that the granting of the additional operating rights would help the railroads.

Now, apart from this very practical consideration, there [fol. 214] is another reason for my appearance here. We believe at Fibreboard that it is important that each of our 44 plants in the western states have access to good, reliable transportation, rail transportation service, and as a matter of fact Fibreboard is probably one of the Western

Railroad's largest customers, and each year our problem of allocating freight among the different railroads is far less acute than the problem of presenting a runaway use of trucking, and it seems clear to us at Fibreboard that it is high time that the railroads eliminated artificial barriers against the use of their services.

And lastly, or the final point that I would like to ask the Commission to consider, is that when the Bieber route was established in 1929, the public had a reasonable right to expect that there would be a full run-out of rate via that gateway, but this has not yet happened to the extent of the joint rates that are involved in this proceeding.

It seems to me that there should be no delay in fulfilling the obligation to provide full service via the Bieber Gateway.

Now, in order that the Commission can be fully aware of the scope of our problem in shipping from our plant at both Antioch and Stockton, California, to the Pacific Northwest, these are the cities in Washington located on the Northern Pacific and Union Pacific railroads to which shipments were made during 1960, and for which routing via Bieber could not be used:

[fol. 215] Bremerton, Washington; Olympia, Prosser, Pullman, Richland, Shelton, Toppenish, Walla Walla, Yakima, and Bellevue.

The reason why we could not route shipments to these cities via Bieber will become evident on examining this exhibit which I would like to ask be marked for identification.

How many copies do you want?

Exam. Wright: One for me, and one for the reporter.

The one-page document bearing the legend in part, "Comparison Between Lowest 'Through' Rate on Fibreboard Boxes, KD Flat from Stockton and Antioch, California," et cetera, will be marked Exhibit No. 25 for identification.

(Complainants' Exhibit No. 25, Witness Worth, was marked for identification.)

* * * * * * *

By Mr. Treanor:

Q. Does that complete your statement?

A. No, it does not.

This exhibit shows the present through rates to the cities involved to which shipments were made during 1960, which would apply via the Bieber Gateway, which would represent the present through rate in Column 1, compared with the combination rates that would apply via—pardon me, I misstated myself.

Column 1 shows the present through rate that would apply via Portland, and Column 5 indicates the combina- [fol. 216] tion routing that would apply via the Bieber Gateway, and there is a substantial difference between Column 1 and Column 5, and it is just not feasible for Fibreboard to use the Bieber route and incur the resulting freight penalty.

During 1960, our traffic from Stockton and Antioch, California, to these cities was divided approximately evenly between truck and rail.

Mr. Burkett: During what year was that?

The Witness: 1960. And while I would prefer not to disclose our actual volume, if necessary those figures could be produced. I think it is sufficient to say here that our total volume to these cities in 1960 amounted to about 45 carloads. There is every reason to expect that if the establishment of the proposed joint routes—pardon me—to expect that the establishment of the proposed joint routes would result in more of our traffic moving by rail, and that no harm would be done to any of the already existing arrangements.

And this, Mr. Examiner, completes my statement.

Exam. Wright: Thank you. Cross-examination?

Cross examination.

By Mr. Burkett:

Q. Mr. Worth, in your direct testimony you refer to the problem of allocating freight among railroads. What is that problem?

A. I don't recall I state it as a problem. I said the subject of determining which of our tonnage will be allocated among [fol. 217] the different railroads is far less meaningful than the problem of preventing a runaway use of trucking within our company.

Q. Why do you consider it necessary to allocate tonnage among railroads?

A. Well, we feel it is desirable to divide our freight among the different competing carriers.

Q. And during 1960 how did you divide your traffic between the Pacific Northwest, between the Bieber route on the one hand, and Southern Pacific-Portland route on the other hand?

A. Well, as to these cities I have testified about, it is totally via the Portland route.

Q. And about what was the percentage?

A. This is totally by the Southern Pacific to these cities.

Q. With respect to all of your traffic which you moved to the Pacific Northwest, including the cities of Seattle and Spokane, will you please state what portion of your traffic you allocated to the Bieber route and what portion you allocated to the Southern Pacific-Portland route?

A. I haven't made a study. I don't know.

Q. Would you say the greater portion of your total traffic to the Pacific Northwest in 1960 moved via the Bieber route or the Southern Pacific-Portland route?

A. I told you I haven't studied it. I don't know.

Q. Did any of your traffic move to the Pacific Northwest [fol. 218] via the Bieber route in 1960?

A. Yes.

Q. And you can't tell us whether that is ten per cent or 90 per cent of your total traffic?

A. I told you I haven't studied it.

Q. Now, referring specifically to this car supply problem, do you require these cars for shipment to the Pacific Northwest at both your Stockton and your Antioch plant?

A. Yes.

Q. And what type of cars do you require?

A. Double-door 50-foot boxcars.

Q. Just regular boxcars?

A. We prefer double-door 50-foot boxcars. We are unable to secure as many of them as we would like to use, and we improvise with whatever equipment is provided.

Q. Now, with respect to moving via the Bieber route to the Pacific Northwest in 1960, who would supply your cars at Stockton?

A. The railroad that would be given the line haul out of Stockton.

Q. That would be the Western Pacific?

A. If the traffic was to be routed that way, yes.

Q. And supposing traffic moved via the Bieber route out of Antioch, would Santa Fe supply the cars?

A. Yes.

[fol. 219] Q. And then if it moved by Santa Fe to Stockton and thence Western Pacific to Bieber?

A. Yes.

Q. Of your total traffic which moves to the Pacific Northwest, does the greater part originate in Stockton or in Antioch?

A. It is approximately even.

Q. Now, referring specifically to your Exhibit No. —

Exam. Wright: 25.

By Mr. Burkett:

Q. You have shown a rate there of, let us say, 85½ cents from Antioch to Bremerton. Does that rate apply by Santa Fe-Antioch to Stockton, and thence by Southern Pacific to Bremerton?

A. Yes.

Q. Have you ever made any shipments by Santa Fe to Stockton, and thence by Southern Pacific to Bremerton?

A. All of the traffic that would be represented here would move that way.

Q. Have you ever given Southern Pacific any traffic at Antioch?

A. Southern Pacific Company does not reach any of our plants at Antioch.

Q. Yes, but is it not a fact that the rate of 85½ cents would apply from your plant at Antioch to Bremerton by Southern Pacific?

A. No.

Q. It would apply, however, by Santa Fe to Stockton, [fol. 220] thence Southern Pacific.

A. That is correct.

Q. Yes. Now, when did you have difficulty in the fall of —strike that, please.

Have you ever had any trouble getting cars at your plant at Antioch during the year 1960?

A. Yes, during the fall season there is a period each year of car shortage.

Q. And the Santa Fe was unable to supply you cars during that period, were they?

A. With the total car request, yes.

Q. And during that same period did you have trouble getting cars from the Western Pacific at Stockton?

A. Not for shipments to the Northwest. We did not call upon them.

Q. Why is it that you did not use Western Pacific routing to Seattle from your plant at Stockton?

A. We do.

Q. And did you have any trouble during 1960 securing cars for movement by Western Pacific and Bieber route from Stockton to Seattle?

A. The answer would be affirmative.

Q. You did have the difficulty?

A. Surely, we were never able to get our total requirement I testified over and over again to that. I said that our [fol. 221] problems to the plants served by two railroads are less acute than those served by one. It is a matter of degree.

Q. And how many railroads serve your plant at Antioch?

A. The Santa Fe does, and then at times when the Santa Fe cannot provide all the equipment then they draw upon the Santa Fe or the Southern Pacific.

Q. And the two railroads serving your plant at Stockton are the Santa Fe and the Southern Pacific?

A. That is correct.

Q. Now, supposing a shipment during 1960 moved from Stockton to Seattle by the Bieber route. Who would furnish the cars?

A. Western Pacific.

Q. Now, have you had any greater problem or less problem in securing these boxcars from the Santa Fe on the one hand, or the Southern Pacific on the other hand?

A. I think all the railroads are in approximately the same situation.

Q. That is the car supply you have received from the Southern Pacific has been just as good as the car supply you have received from the Santa Fe and Western Pacific?

A. I prefer to state it the other way, equally deficient.

(Laughter.)

Q. Would you say that the car supply which you have received from the Southern Pacific has been any more deficient than the car supply you have received from the Santa Fe and the Western Pacific?

[fol. 222] A. No.

Q. Would you please state on what days in 1960 you were unable to secure cars from Southern Pacific for your shipments?

A. I don't have all of our office records here.

Q. Would you please state in what months you were unable to secure those cars?

A. I don't have our records here. I said in the fall.

Q. Can you tell me whether you were unable to secure those cars for, let us say, a period of a hundred days or a period of five days?

A. I don't have that detail here.

By Mr. Farrell:

Q. Mr. Worth, can you tell me whether any of your shipments that moved to Bellevue moved over the Bieber route?

A. So far as I know, the answer is none.

Q. This past year?

A. None.

Q. And you are aware of the fact that you can reach Bellevue through the Bieber route, and that the Great Northern will absorb the switch charge to Seattle, are you not?

A. No, I am not.

Q. And, therefore, you didn't know that you could route to Bellevue over the Bieber route by the same rate that you can by routing the Southern Pacific?

[fol. 223] A. I told you I didn't know that.

Q. Now, with respect to your shipments moving to Bremerton, have you moved any of those via the Bieber Gateway?

A. No.

Q. Are you aware of the fact that you have rates available through that gateway, through Bremerton?

A. I am aware of the fact that the lowest rate does not include that route.

Q. You are not aware of the fact that Bremerton could be reached by either car through Bieber?

A. I answered the question already.

Q. Now, services of the Cascade Mountains in Portland are important to you, Mr. Worth?

A. Extremely.

Q. Have you considered, in determining your position in this proceeding, the amount of circuity involved in the routes here sought with routing via Portland or not?

A. Yes.

Q. And you are aware that there is substantially greater circuity?

A. Pardon me?

Q. You are aware that there is substantially greater circuity?

A. No, I am not.

Q. You are not aware of that fact?

A. I don't believe it.

[fol. 224] (Laughter.)

Q. Well, do you know how shipments are handled today that are routed Southern Pacific into Portland, and Northern Pacific beyond to points east of the Cascades, do you know how those shipments are actually moved today, of your own knowledge now?

A. Well, I don't understand the full implication of your question.

Q. Do you know how those same shipments, for example to points in Easton, Washington, would be handled under the proposed routes here sought?

A. As I understand the complaint case, the routings that would be established are identical with those that now exist via Portland.

Q. That is your understanding?

A. That is correct.

Q. And it was based on that understanding that you determined your position in this proceeding?

A. Yes.

Mr. Farrell: I have nothing further.

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[fol. 225] OFFER IN EVIDENCE

(Complainants' Exhibit No. 25, Witness Worth, was received in evidence.)

* * * * * * *

P. STEELE LABAGH was duly sworn and testified as follows:

Exam. Wright: Be seated.

Direct examination.

By Mr. Treanor:

Q. Will you please state your full name, sir?

A. My name is P. Steele Labagh.

Q. Mr. Labagh, what is your address?

A. 215 Fremont, San Francisco, California.

Q. And, sir, by whom are you employed and in what capacity?

A. I am employed by the California Packing Corporation in the capacity of traffic director. I have been with the [fol. 226] corporation 40 years in shipping, sales and traffic capacity.

Q. For those who may not be acquainted with Cal-Pack in the trade, what is your trademark on the products you sell?

A. That is a very important question, and I would like to give the answer, Del Monte Food Products.

Q. Mr. Labagh, do you have any affiliation with the so-called Canners League?

A. Yes, I am the chairman of the traffic committee of the Canners League of California, and I am here today in that capacity as chairman of the Canners League.

The Canners League is a combination of canners who pack. There are packed in California 126 million cases of canned goods, and the Canners League members represent 75 per cent of that pack, and those members here today are here by the unanimous agreement of the traffic committee that we are here in behalf of the Western Pacific getting the rates through the Bieber and combination route with the Union Pacific and the Northern Pacific Railroads.

Q. Mr. Labagh, just so the record may be complete, may we have a brief resume of your professional and business experience?

A. I am an ICC practitioner. I also am an attorney-at-law in California. I am chairman of the Canners League traffic committee. I am on the executive committee of the

Canned Goods Shippers Conference, which is a national organization of canners of all types of foods.

[fol. 227] I am on the traffic committee of the Grocery Manufacturers Organization, which is an organization of foods manufacturers, all kinds of foods.

I am on the executive committee of the National Industrial Traffic League, which is a group of industry people throughout the whole United States.

I am on the traffic committee of the Dried Fruit Association.

I am on the traffic committee of the San Francisco Chamber of Commerce and the Oakland Chamber of Commerce.

I am on the executive committee of the Pacific Coast Shippers Advisory Board, and I know there are some others, but I can't remember.

(Laughter.)

Q. Mr. Labagh, can you please for the record state the general reasons for the Canners League supporting the complainant in this proceeding?

A. Generally speaking, the Canners League, and I am speaking for the members, that we want the opportunity of using both railroads, and by both railroads I mean the Western Pacific and Southern Pacific, and the Great Northern, and the Union Pacific and Northern Pacific.

Another reason is that we want it for the purpose of car supply and service. It is just an acknowledged fact of prudence that if you have two railroads serving you the service and the car supply is better than if you are exclu- [fol. 228] sively served by one railroad, or if you are beholden to one railroad.

It gives you greater flexibility in your operations.

Whenever we, and speaking specifically for the California Packing, whenever we build a warehouse or attempt to go out and build a warehouse, one of the fundamentals that the traffic department recommends is that the warehouse must be built on ground that is served by more than two railroads, by two or more railroads.

I don't know that we have ever built a warehouse during my time where we were only served by one railroad for these generalities that I have already named.

It is just in the interest of good business when you look ahead for five, ten, 15, 20 years, to be served by more than one railroad.

Q. Mr. Labagh, do you have any specific situations in mind where either canners or the Western Pacific have been hurt by the absence of these routes?

A. Well, there are some specifics. There are in California some plants of some of the canners that there is no interchange in that particular town. By that I mean the town is only served by one railroad, namely, maybe the Sacramento Northern, or the Western Pacific, or there may be other instances where the cannery is served exclusively by one railroad, and in those two cases why you would have to pay the combination rates in order to ship your [fol. 229] goods to some point now upon the Union Pacific or Northern Pacific, and then there is the other case where there is common service by both railroads, but where your plant is served by one railroad only. In that case, you would have to pay the switch, and to get away from those specifics, why, the canners in California feel that this kind of service, as proposed here, would be to their benefit and would not materially—well, to their benefit.

Q. That concludes the direct examination?

A. It does.

Exam. Wright: Cross examination.

Cross examination.

By Mr. Burkett:

Q. Mr. Labagh, where are Cal-Pack warehouses located in California from which shipments are regularly made to the Pacific Northwest?

A. Well, one warehouse we have is at Alameda.

Q. All right.

A. Do you want all the warehouses?

Q. Yes, generally speaking.

A. Well, I have—

Q. From which you regularly ship to the Pacific Northwest.

A. Rather than go down this list of all the warehouses here, as to what we regularly ship to the Northwest, I think that you should look at this case as representing all the canners, and I can't give you the information for all the canners in California, where their warehouse are located, [fol. 230] so I would be glad to give you this information. It would only clutter up the record, and I don't see any purpose of it, except to say that our shipments in the past, California Packing shipments in the past have been made to the Northwest via the Southern Pacific route.

Q. Have you made any shipments—do you make shipments regularly to Spokane, or Seattle, or Portland?

A. Yes.

Q. Do you use the Bieber route on shipments which you make to Spokane, Seattle or Portland?

A. Not to my knowledge.

Mr. Farrell: What was that answer?

The Witness: Not to my knowledge.

By Mr. Burkett:

Q. Why is it that Cal-Pack does not use the Bieber route on shipments made to Spokane or Seattle?

A. Most of our shipments going north go by the Southern Pacific and, as I say, I am here speaking on behalf of all canners, and I can't say why all canners do not ship, how they ship. All I can say is that this is what they want.

* * * * * * *

[fol. 231] MYRON LINDGREN was duly sworn and testified as follows:

* * * * * * *

Direct examination.

The Witness: My name is Myron Lindgren. I am Traffic Manager and as such, an officer of Yakima Fruit Growers Association, Yakima, Washington. I have been connected with the Association for the past 19 years and have served [fol. 232] eight years as Traffic Manager.

Our organization is a cooperative of 361 individual fruit growers in the Yakima Valley. It is a single corporation organized under the laws of the State of Washington. Our shipping points are Yakima, Selah, Sawyer, Grandview and Kennewick, all of which are served by both Northern Pacific and Union Pacific; Benton City and Ahtanum served only by Union Pacific; and Wapato, Gleed and Weikes located only on the Northern Pacific.

In making our shipments, the individual growers do not appear as the shippers on the bills of lading and all shipments are made by the Yakima Fruit Growers Association and this is so shown on the bills of lading.

We ship fresh apples, cherries, peaches, pears, plums and apricots. Annually we ship the equivalent of an average of 2,000 carloads per year to all points by both truck and rail. Our shipments to California amount to the equivalent of 200 carloads per year and we use both truck and rail service on such shipments. We have found that we can ship as much in a truck as we can in a rail car.

We route the shipments unless our customer specifies a definite route and the freight charges are paid by the customer.

We do not ship any freight to California via the Great Northern, Western Pacific, Santa Fe routes for the reason [fol. 233] that such routes do not have available any through rates from our shipping points and the combination rates which are presently applicable are higher than the rates in connection with the Southern Pacific routing.

We do use the Southern Pacific routings to Northern and Southern California points such as San Francisco and Los Angeles. W are not satisfied with the service which is provided over such routes. It is our feeling that if we had competitive routes and had a choice, we would get better service not only via the Inside Gateway, but also from the Southern Pacific routes. For example, when we ship from Yakima or other shipping points to destinations other than those in California, we have a choice of railroads, either the Northern Pacific or Union Pacific, and generally speaking this competitive service is very good. I know, for example, that we receive better service on our shipments to the east than railroads give us to California. It frequently happens that we get as fast service from Yakima to Chicago, a distance of over 2,000 miles, as we get over the much shorter distance from Yakima to Los Angeles.

At present our schedule to Chicago is fourth evening for fifth morning sale. This is a guaranteed schedule. The Northern Pacific-Southern Pacific route at present is sixth morning delivery to Los Angeles. The piggyback schedule is fourth day arrival in Los Angeles for fifth morning sale. [fol. 234] The Union Pacific schedule to Los Angeles is third day delivery.

It is my firm conviction that it is the existence of railroad competition which is responsible for the better service to the east. I firmly believe that if we had two competitive routes to California, the service would be immeasurably improved. If the Commission grants the relief sought by the Western Pacific and the rates become applicable, we would certainly utilize that service.

Mr. Treanor: I have just one additional question for clarification.

By Mr. Treanor:

Q. Mr. Lindgren, you have testified that the Union Pacific schedule to Los Angeles is third day delivery. How is that traffic routed?

A. Through Salt Lake.

Mr. Treanor: Thank you.

Cross examination.

By Mr. Burkett:

Q. And do the same rates apply by way of the Union Pacific via Salt Lake City to Los Angeles, as applied by Portland and Southern Pacific?

A. Right.

Q. Well, then, why is it that you ever make shipments via Portland-Southern Pacific rather than Union Pacific to Los Angeles?

A. With a Union Pacific origin?

[fol. 235] Q. Yes, with a Union Pacific origin.

A. We don't ship that way. We ship through Salt Lake.

Mr. Farrell: I have nothing.

Exam. Wright: No further cross?

Mr. Hobbs: No.

Exam. Wright: Any redirect?

Mr. Treanor: No, sir.

Exam. Wright: Thank you very much, Mr. Lindgren. You are excused.

(Witness excused.)

Exam. Wright: Call your next witness, Mr. Treanor.

Mr. Treanor: Mr. Cloninger, please.

Avery M. Cloninger was duly sworn and testified as follows:

Exam. Wright: The witness may read the statement that has been distributed to the parties.

Direct examination.

The Witness: My name is Avery M. Cloninger. I am General Traffic Manager of Longview Fibre Company, Longview, Washington. My address is P.O. Box 1019, Longview, Washington. I have served as General Traffic Manager of this company for the past 20 years.

In my present position, I direct the transportation of inbound and outbound material and products at our plants at Longview and Seattle, Washington; Oakland and Los [fol. 236] Angeles, California; and other points not involved in this proceeding.

We are manufacturers of pulp, paper, containerboard and allied products. At Longview our primary production is in excess of 1000 tons per day.

We feel that the failure to publish joint through rates from Longview to California points via the Bieber Gateway has inconvenienced us, and our customers.

I wish the reporter would take down the next sentence as it is different from the statement.

It has deprived us of a freedom of choice in our routings via Northern Pacific and/or Union Pacific, and forced all of our traffic to move via the Southern Pacific south of Portland, except for single-line movement from Longview to Los Angeles via Union Pacific.

We will return now to the statement.

If these rates applied via the Bieber route as well, we would be in a position to utilize Northern Pacific and Union Pacific routed cars via Bieber when Great Northern cars are in short supply. We could also comply with our shippers' requests for a Bieber routing which frequently happens.

Our car shortage problem has been disturbing at times. When we lack a sufficient supply of Great Northern routed equipment, we are forced to disregard requests by our customers for Bieber routing. Our own Oakland plant is served jointly by the Western Pacific and Southern Pacific, [fol. 237] and our Los Angeles plant is served by the Los Angeles Junction Railway.

If we had the Bieber route available to both Oakland and Los Angeles we feel our service would be faster and more efficient, as well as more flexible than what we are now confined to.

I wish to make this additional statement, Mr. Examiner. For many years we have been using 50-foot double-door cars for shipment to California, and we have been alarmed, we are alarmed by the decrease of the supply of such equip-

ment with the advent and continued present growth of bi-level and tri-level auto carrying equipment.

The majority of our tonnage to California destinations is in such form that it can only be loaded in double or more than ten-foot long, 50-foot equipment.

We have been forced to rely more and more on other carriers that serve Longview for an ample supply of such equipment. However, we are deprived of the freedom and flexibility of routing via Bieber when such cars are supplied by the Northern Pacific and/or Union Pacific.

We believe that additional routes would tend to improve transit time and other services through the natural forces of competition.

Q. Just one additional question for clarification.

Mr. Cloninger, when your traffic moves from Longview over the Union Pacific, how is that handled into Los [fol. 238] Angeles? Do you know what the routing is for that?

A. It is via Salt Lake City.

Mr. Treanor: Thank you.

Exam. Wright: Cross-examination.

Cross examination.

By Mr. Burkett:

Q. Well, is it a fact that today you have three routes available to Los Angeles, one by Union Pacific all the way, the second by Great Northern to Bieber, thence Western Pacific-Santa Fe, and thirdly by Northern Pacific or Union Pacific to Portland and then Southern Pacific?

A. That is correct.

Q. And you have also another combination you have today is by Great Northern to Portland, then Southern Pacific?

A. That is right.

Q. So you do have this Bieber route which is available in all instances—strike that, please.

In the Great Northern, the Great Northern does serve your plant in Longview?

A. That is right.

Q. And so you do have available for all shipments that you choose to make by the Bieber route Great Northern origination at Longview?

A. To California destinations?

Q. Yes, sir.

A. That is right.

[fol. 239] Exam. Wright: Any further cross?

By Mr. Farrell:

Q. Now, if you were asked the same questions with respect to Seattle, you also have the car supply of all three roads to draw upon Seattle, do you not?

A. Well, I don't know.

Q. Namely, the Union Pacific and the Great Northern and the Northern Pacific, isn't that correct?

A. We do have a plant in Seattle, but our main shipping point southbound is from Longview, Washington.

Q. You do not originate any shipments out of your Seattle plant for movement into points in California?

A. That is right.

Mr. Farrell: I have nothing further.

Mr. Burkett: I just have one question I neglected to ask.

By Mr. Burkett:

Q. And that is that all your shipments which you make to California are made either to your Oakland plant or your Los Angeles plant?

A. No.

Q. Where else are they made to?

A. Well, most all major cities in California.

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[fol. 240] PAUL J. ROCHE was duly sworn and testified as follows:

* * * * * * *

Direct examination.

The Witness: My name is Paul J. Roche. I am employed as Office Manager and Sales Representative with the Turlock Cooperative Growers, 310 Sansome Street, San Francisco, California. I have been engaged in the food processing business for ten years and have been with the Turlock Cooperative Growers for the past five years.

Turlock Cooperative Growers is a cooperative food canner and processor, consisting of approximately 180 individual producers of fresh fruits and vegetables located at Sacramento, Modesto, Turlock and various other points in the Sacramento and San Joaquin Valleys. Our principal [fol. 241] point for the shipment of the processed foods is located at McHenry, California, a local point on the Tidewater Southern Railway. The purpose of my testimony today is to inform the Commission with regard to the physical location of our plant, the manner in which we ship to the Northwest, and some of the problems facing our organization in the movement of these foods. I am not our company's Traffic Manager and my testimony is not designed to cover such details as the technical intricacies covering rates and routes.

The Turlock Cooperative Growers do ship from McHenry to various points in the Pacific Northwest, for example, Seattle and Spokane, Washington. As these points are located on the Great Northern, we do have through rates from McHenry.

Our preference in making shipments to the Northwest is to ship the traffic via rail, but, as we do not have through rates to all destinations in the Northwest, we are unable to utilize the railroads to the extent that we desire. If we have shipments destined to points in the Northwest served by the Northern Pacific or Union Pacific, such as to Yakima and Walla Walla, Washington, we do not ship the traffic all the way via rail.

McHenry, as well as the nearby competitive point of Modesto, is served by the Tidewater Southern, and Modesto is also served by the Southern Pacific. As traffic originating on the Tidewater Southern must pay combination rates [fol. 242] when destined to points on the Northern and Union Pacific, we have embarked upon the practice of trucking such freight from McHenry to Stockton, where we have a warehouse, for loading into railroad cars and shipping out via Southern Pacific. We could, of course, truck such freight from our McHenry plant to the Southern Pacific at Modesto, but as long as we have the product already in the truck, it is more economical for us to take the traffic to Stockton for loading, because the Stockton rate on the Southern Pacific is lower than the Modesto rate.

We feel that it would be to the advantage of our growers if we had through rates to points on the Northern Pacific and Union Pacific via the Tidewater Southern and Western Pacific, for several reasons. We have been satisfied with the service via the so-called Bieber route based on our use of it to destinations on the Great Northern.

We feel that it would be more economical for us if we were able to ship directly from McHenry by rail, instead of utilizing our own trucks from McHenry to Stockton. If we were able to load our traffic at the McHenry plant directly into the rail cars, we avoid the extra expense inherent in first loading it into the truck, unloading it at Stockton, and then reloading it into the cars. Furthermore, there are times when we would desire to stop for completion of loading in transit at such points as Thornton, California, and this point is served by the Western Pacific.

[fol. 243] Mr. Treanor: That completes the direct examination.

Exam. Wright: Cross-examination.

Mr. Hobbs: None.

Mr. Burkett: Just a moment, please.

(Short pause.)

Cross examination.

By Mr. Farrell:

Q. Have you ever applied for a through line of rates via Bieber from your location at McHenry, California?

A. Yes, we have.

Q. And when did you do that?

A. About three or four months ago.

Q. And did you do that after you were contacted by the Western Pacific Railway Company?

A. Yes, sir. I originally put the petition through on the Southern Pacific for through rates.

Q. And when was that?

A. As I said, about three or four months ago.

Q. Yes.

A. It is on the docket now.

Q. And that was assigned a docket number?

A. Yes, I believe it was.

Q. And what has been the disposition of that docket, if you know? Is it still pending?

A. As far as I know, it is still pending.

Q. It is still pending?

[fol. 244] A. Yes.

Q. There has been no final action taken on it?

A. No.

Q. And then Western Pacific contacted you?

A. That is right.

* * * * * * *

Redirect examination.

By Mr. Treanor:

Q. Mr. Roche, is it, the point that you wanted to establish, that you were a member of the Canners League?

A. That is correct.

Thank you very much.

(Witness excused.)

Mr. Treanor: Mr. Sigloh, please.

FRANK L. SIGLOH was duly sworn and testified as follows:

Exam. Wright: Be seated.

As his direct testimony, Mr. Sigloh may read the state-
[fol. 245] ment that has been distributed to the parties.

Mr. Treanor: Thank you, sir.

Direct examination.

The Witness: My name is Frank L. Sigloh. I am employed as Assistant General Traffic Manager of Boise Cascade Corporation, whose address is P.O. Box 200, Boise, Idaho. My business experience has included 13 years service with Boise Cascade Corporation and its wholly-owned subsidiary, Ames-Harris-Neville Co. Boise Cascade is a diversified forest products, paper and packaging industry.

Our company ships pulpboard from Wallula, Washington, to various destinations in both Northern and Southern California. At Wallula we have available the services of both the Northern Pacific and Union Pacific Railroads. On the bulk of our shipments to Los Angeles, in Southern California, we use the services of the Union Pacific, and it is my understanding that such traffic is handled by the Union Pacific through Salt Lake City, Utah, thence into Los Angeles on the Union Pacific. The routing via Salt Lake City is at the specific request of the Union Pacific.

We do, however, also ship pulpboard to numerous points in Northern California, which are not served directly by Union Pacific, but which are served by Western Pacific, Sacramento Northern or Santa Fe, and which are also served by other carriers, including Southern Pacific Com-
[fol. 246] pany. These points include San Francisco, Oakland, San Lenadro, Richmond and Pittsburg. Under today's conditions, we do not route any shipments from Wallula, Washington, to any of these latter points via the Great Northern-Western Pacific route because the through rates available to us through Portland via Southern Pacific Company are not applicable to the former mentioned route.

On lumber shipments our situation presently differs somewhat from the pulpboard problem. Our lumber mills located in Oregon and Washington on Northern Pacific and Union Pacific ship, on occasion, to both Northern and Southern California destinations, some of which are located on exclusive Western Pacific points. It is very difficult to determine the exact consignees and locations of them as the bulk of the lumber is sold through wholesalers. However, we do know that a customer is located at Hayward, California, on the Western Pacific. In the past when we moved traffic to this customer, we have been subjected to payment of the Western Pacific local rate from Oakland to Hayward, in addition to the charges applying on the through rate from the Northwest with movement via Northern Pacific or Union Pacific to Portland then Southern Pacific to Oakland.

At the present time I am informed that, due to some unusual circumstances, the combination rates on lumber to Northern California points from the Northwest are lower [fol. 247] than the through rates on lumber. Therefore, as to these lumber shipments to Northern California, our problem appears to be temporarily alleviated. However, on the lumber moved to Southern California this situation does not prevail and we do not have available competitive through rates on lumber via the Inside Gateway.

If competitive rates applied via the routing Union Pacific or Northern Pacific to Portland, thence Great Northern to Bieber, thence Western Pacific, I would utilize it for a portion of our traffic. I feel that it is important for us to have competitive routings available and I believe that such a situation would considerably improve our railroad service to Northern California.

Mr. Treanor: That completes the direct examination.
Exam. Wright: Cross-examination.
Mr. Hobbs: I have none.

Cross examination.

By Mr. Burkett:

Q. Referring to the second line on page 2 of your prepared statement, do you ship anything out of Wallula by the Great Northern?

A. No, the Great Northern doesn't go to Wallula.

Q. Referring to the last—strike that, please.

With respect to shipments moving to Southern California, do you have competitive rates on lumber by the Union Pacific route through Salt Lake City?

[fol. 248] A. I don't know. I couldn't tell you. I am not prepared to testify on lumber rates.

Q. Well, you do have a full run-out of rates, do you not, by Northern Pacific or Union Pacific to Portland, thence by Southern Pacific to Southern California, or thence by Southern Pacific to Stockton and then Santa Fe to Southern California?

A. Is that on lumber or pulpboard?

Q. Any commodity.

A. Yes, that is correct.

Q. Just exactly where is Wallula, Washington located?

A. Where is it located?

Q. Yes.

A. It is located on the bend of the Columbia River. It is about 17 miles east of Pasco, east and south of Pasco.

Q. And from—

A. On joint trackage of the Northern Pacific and Union Pacific.

Q. And you presently have a full run-out of rates from Wallula to all destinations in Southern California by either the Salt Lake City route or the Portland route, haven't you?

A. That is correct.

Q. The situation of which you refer at the bottom of page 2 of your statement, which you state, "The combination rates on lumber to Northern California points from the Northwest are lower than the through rates on lumber," how long has that situation existed?

[fol. 249] A. I couldn't tell you.

Q. To your knowledge?

A. I don't know.

Q. This situation, in other words, gives you wide-open routing, does it not?

A. Yes.

Q. Since this situation has occurred, you don't know when it has occurred, has this resulted in any shift in your traffic moving the Bieber Gateway with reference to the Southern Pacific, moving via the Bieber Gateway, if you know?

A. To the best of my knowledge, no, I don't have that information available with me.

Mr. Farrell: Nothing further.

Exam. Wright: Any redirect?

Redirect examination.

By Mr. Treanor:

Q. How long ago did you find out about the situation on the lumber to Northern California?

A. Last night.

Q. Who told you about it?

A. The Western Pacific.

Recross examination.

By Mr. Farrell:

Q. And you were so concerned about these rates you didn't know the situation existed, is that correct?

A. As I testified, I know nothing about lumber rates, and I haven't concerned myself with them.

[fol. 250] Mr. Treanor: His testimony is divided into two parts, pulpboard and lumber.

By Mr. Farrell:

Q. What are the origins on your lumber movements?

A. What are the origins?

Q. What combinations are lower than the through rates, if you know?

A. Well, the origins would be Yakima and Ellensburg, in Washington, Elgin, Joseph and La Grande in Oregon.

* * * * * * *

A. R. ALLEN was duly sworn and testified as follows:

Exam. Wright: Be seated.

[fol. 251] Direct examination.

The Witness: Mr. Examiner, I do not have a—I had better identify myself first. I am sorry.

My name is A. R. Allen. I am manager of the Portland Freight Traffic Association in Portland, Oregon. I have occupied that position since December 1 of 1960.

Prior to that time I was traffic director for the Los Angeles Chamber of Commerce some five and a half years.

Prior to that time, I was traffic manager with Ford Motor Company in various locations on the West Coast for some 14 years.

The Portland Freight Traffic Association is generally and broadly speaking the civic spokesman for the Portland-Vancouver metropolitan area which generally and basically covers a four-county area there surrounding Portland of Clark County, Clackamas County, Columbia County and Multnomah County.

We have as members of our Association the Portland Chamber of Commerce, the Dock Commission of Portland, the Port of Portland, Multnomah County, Vancouver Chamber of Commerce, Longview Port, the Port of Vancouver, the Port of Astoria, and some 150 of the larger more basic shipping organizations in the state of Washington—I mean shipping firms, not carriers, in Oregon, and a number in Washington, of course, too.

Yesterday I entered an appearance as an interested party. For what the record may be worth, I would like to [fol. 252] change my appearance to that now in support of the Complainants' petition.

By the way, I also would want the record to show that I was not contacted prior to the hearing nor during nor otherwise solicited by the Western Pacific nor any carriers who attend the hearing.

Basically, our interest in this proceeding is that one of a civic nature. I am not here necessarily to discuss rates nor routes nor tonnages shipped.

I would like to talk about the interest that we feel there at the Association representing the community we have in this proceeding.

First of all, we feel that the successful outcome of the proceeding and a finding for the complainant basically would, as far as we are concerned in the Northwest area there, provide in part and advance some of the benefits which we hope to eventually obtain from the ultimate and perhaps impending merger of the Northern Pacific, the Great Northern, and the SP&S to some extent.

When those lines do merge, then some of the same through routing then would be applicable that we are concerned with now, insofar as they pertain to the Northern Pacific.

That is not true with respect to the Union Pacific because the Union Pacific is not involved in that particular merger.

Another point that we are interested in, of course, up [fol. 253] there on behalf of our community is that we believe it will provide for a greater and a more complete competitive rail system to our area which will serve the Pacific Northwest, particularly the Pacific Northwest points from California.

Another point that we are of course very interested in, even though Portland is not necessarily in all instances directly affected by this, we believe that a greater freedom in routing, more competition, the greater application of joint routes and rates would materially assist in paving the way for a greater industrial development and a location in the Pacific Northwest.

Our Association, of course, is very actively interested in that. We have worked at least since I have been there with many industries making specific rate studies. We have

worked with the State bodies; we have worked with the Chambers of Commerce encouraging industry to come to our area.

The side results of a favorable decision and a finding for the complainant in this petition, well, as I said before, it would not directly affect Portland. It would affect Oregon and it would affect our metropolitan area.

This is important to us because Portland is basically the principal marketing center of the Pacific Northwest, and we are the basic and principal distributing center there. As more industries come in, be it in Oregon or Washington, even in Idaho, a good portion of that economy rubbed off [fol. 254] on us in Portland.

We have heard much testimony, and it has not been contradictory at all—

Mr. Burkett: Now, Mr. Examiner, I am going to object to this witness attempting to summarize the testimony of record.

The Witness: Very well.

Exam. Wright: I will sustain that objection. Just state your position.

The Witness: It is a well-known fact that the basic economy of Oregon is that of an agriculture and lumber economy. We feel that the greater expansion of through rates and through routes would materially assist our economy and, therefore, we strongly urge and support the complainants' position.

That concludes my statement.

Exam. Wright: Cross-examination?

Cross examination.

By Mr. Hobbs:

Q. Mr. Allen, what you just expressed is really your personal opinion about this, isn't it?

A. When?

Q. About supporting the complainants here.

A. No, it is not.

Q. You said that you came in here yesterday morning, and you were non-committal as to whether or not you were on the side of the complainants or the defendants, but overnight you decided that you would be on the side of the complainants.

[fol. 255] A. Well, would you like to check the appearance statement that I entered yesterday morning?

It shows as an interested party, and also in support of the complainant. It is in my appearance entered.

Q. All I know is what you said in your oral appearance.

Now, is the Portland Chamber of Commerce a member of your Association?

A. Yes, they are.

Q. Do you have specific authority of the Portland Chamber of Commerce to appear here in support of the complainants' case?

A. Generally and broadly, my membership does not specifically authorize us to participate in a case. We do not take it up singly with our membership any more than an ordinary Chamber of Commerce would.

Q. In other words, you have no specific authority from any organization belonging to your Association to appear down here in support of the complainant?

A. Yes, I talked to three of our directors who are our lead directors and are interested in this matter.

Q. Directors of what?

A. Directors of our Association.

Q. Well, the Portland Traffic Association, yes, but how about all the associations that belong to your Association?

A. (No response.)

Q. You have nothing from them?

[fol. 256] A. They belong as a member.

Q. Yes, and you have no specific authority to speak for the Portland Chamber of Commerce nor any other organization that you listed here this morning?

A. No, because we never solicit that specific authority.

Q. Well, for whatever reason, you don't have it?

A. It is not customary to have. We do not have it in any proceeding we have become involved in.

Q. Well, the answer to my question is that you have no specific authority?

A. No.

* * * * * * *

[fol. 257] T. P. WADSWORTH resumed the stand and testified further as follows:

Cross examination.

By Mr. Farrell:

Q. Mr. Wadsworth, directing your attention to what has been marked for identification as your Exhibit No. 1, you show south of Wishram a red line between Bend and Wishram, marked Spokane-Portland and Seattle Railway.

Isn't that the Oregon Trunk Railway Company which extends from Bend to Wishram?

[fol. 258] A. That is true but, of course, the Oregon Trunk is owned by the SP&S.

Q. That is right, but to the extent that the Oregon Trunk participates in rates, it takes a division, it is a separate railway corporation, is it not?

A. Participates in what rates?

Q. I say to the extent that it participates in rates, when and if it does, in other words it is a separate railway corporation which is wholly owned by the Spokane, Portland & Seattle Railway Company.

A. If you say it is, I will take your word for it.

Q. But wasn't that the testimony of some of your own witnesses yesterday?

A. What witnesses?

Q. I refer to the testimony of Witness Mr. Grant Allen who stated for the record that the Oregon Trunk Railway Company extended from Bend to Wishram.

A. Are you trying to cross-examine me on Mr. Allen's testimony?

Q. No, I am not, Mr. Wadsworth. I am simply trying to keep the record straight.

Now, what is your position? Is that the Oregon Trunk Railway or the Spokane, Portland & Seattle Railway Company?

A. (No response.)

Q. I don't mean to confuse you.

A. I thought I answered the question. I said I agreed with you.

[fol. 259] Q. All right. Fine.

A. Fine. That it was the Oregon Trunk.

Q. Now, you also show Richland, Washington on the Northern Pacific about four or five stations west of Pasco. Is it not true that Richland, Washington is located on a short piece of track extending out from Kennewick about 14 miles?

A. I think that is correct.

Q. Now, does not the Northern Pacific extend from Pasco to Riparia?

A. I explained in my testimony that the purpose of this map was to bring or provide a general picture of the situation, and I said that in my testimony, that it had not been drawn to scale, and it was not intended to be absolutely correct in all respects.

Q. Yes.

A. The purpose of it was merely to give the Examiner a picture of the geographical location of the rail lines, a general picture.

Q. Well, you are willing to concede then, Mr. Wadsworth, there are a number of inaccuracies in this map?

A. I certainly am.

Q. And you prefer that we not deal with those?

A. I will take your word for it.

Q. All right. Now, in your prepared statement, the last paragraph on page 4, you refer to through joint class and commodity rates, via Bieber to points in Oregon, Washing-

[fol. 260] ton and Idaho on the Great Northern, and its

shortline connections other than Northern Pacific and Union Pacific.

Is it not a fact that there is also a line of class rates via Bieber and stations on the Western Pacific with the stations on the Northern Pacific, and that to stations Easton, Washington and east, that those rates embrace the lines of the Northern Pacific, the SP&S and the Oregon Trunk, and thence Great Northern and Western Pacific, and that if it is to points Easton, Washington and west, it embraces the Northern Pacific, SP&S and Oregon Trunk, Great Northern and Western Pacific?

Is not that a fact?

A. I don't understand the question.

Mr. Farrell: Would you read the question, please?

Exam. Wright: The reporter will read the question.

(Question read.)

The Witness: Well, Mr. Farrell, I would like to be as helpful as I can, and I will say this. I know that we have some class rates from Northern Pacific points. Whether you have correctly described the area or not, I will have to rely upon your integrity and accept your word.

By Mr. Farrell:

Q. Thank you.

A. I know there are such class rates, but they have very limited application as far as California points on the complainants are concerned.

[fol. 261] Q. Then you don't know what stations they embrace in California nor what stations they embrace in California nor what stations they embrace on the Northern Pacific in the territory covered by this complaint, is that correct, at the present time?

A. I don't have that information.

Q. And these rates that we are discussing are via the Bieber Gateway?

A. It is my understanding that there are a few class rates from Northern points.

Q. Now, to the extent then that you did not consider this, your Exhibit 3, Table 4, does not show all the routes on the rate application, isn't that correct?

A. (No response.)

Q. Wouldn't that also follow?

A. Well, sure, that is right.

Q. Now, directing your attention to your Table 6, your Exhibit 3, this exhibit shows stations that are served jointly by the Great Northern and either the Northern Pacific or the Union Pacific.

A. Yes.

Q. And it is your statement that none of these have interchange facilities, isn't that correct?

A. That is my statement.

Q. And the stations that are on joint trackage you have placed an asterisk on them, is that right?

[fol. 262] A. Right.

Q. Now, what is the distinction, so far as rate application between the stations then which are prefaced with an asterisk and those which are not?

A. (No response.)

Q. So far as an industry located at those points?

A. There is no distinction. There is no difference.

Q. Well, let's take the first one. You have an asterisk on Castle Rock, Washington. Now, an industry located at Castle Rock, Washington, would have rates available via the Great Northern on the Bieber Gateway, a full line of joint through rates, isn't that correct?

A. That is right.

Q. And all the industries there would be served by the Great Northern, because it is on joint track, isn't that correct?

A. I couldn't say that that is true.

Q. Well, what is the significance? And I will go back to my other question, what is the significance of the asterisk, "Located on joint tracks"?

What do you mean if that isn't what you mean?

A. The explanation of the asterisk seems to be self-explanatory, so far as I am concerned. I mean, "located on joint tracks," and not located upon other than joint track.

Q. Doesn't this mean, Mr. Wadsworth that at Castle Rock, Washington, that any industry at Castle Rock, Wash-
[fol. 263] ington, would be local to the Great Northern Railroad?

A. Not necessarily.

Q. What precisely does it mean?

A. I said it was self-explanatory. The asterisk designates the points which are located on joint track.

Q. Oh, I can read that, too, but I say, what does that mean to you?

A. (No response.)

Q. Does that mean that if I am an industry located at Castle Rock that I may or may not have to pay a switching charge to send my shipments over the Great Northern Railroad via the Bieber Gateway?

A. You are asking me to assume that every track at Castle Rock is a joint track, and I don't believe that is true. Some of the tracks there are operated by one railroad, for example, not necessarily a joint proposition all the way through.

Q. But, in other words, when you lifted—who prepared this statement?

A. I did.

Q. When you put an asterisk there as located on joint trackage, did you mean that two or more carriers reached the town over joint trackage? Was that what you meant?

A. No, the town is sitting on a joint track, if that is any clearer to you.

[fol. 264] Q. And it is now your testimony that you don't know what industries, if any, at any of these points which you place an asterisk at, are located on the joint trackage and what industries, if any, are located on separate trackage of one or more of the other railway companies, is that correct?

A. That was not the purpose of this table.

Q. What was the purpose of this table?

A. I hate to be repetitious, but it seems to be necessary. The table explains that there are certain stations which are served in common by the three railroads listed, but without facilities to interchange freight.

Now, if your point is this, that there are facilities at Castle Rock to interchange freight between all three railroads, that fact cannot be developed from tariffs on file with the Commission, and that is the reason why I seem to be taking a rather stubborn attitude here.

I am drawing the line between stations that have interchange facilities and stations that do not have interchange facilities on that criteria.

A station that has an interchange facility with another is published in a tariff somewhere. Now, nowhere is there a tariff which provides that at Castle Rock the Great Northern interchanges freight with the Northern Pacific.

Q. Well, let's take these one at a time. Let's take entering Washington for a moment.

[fol. 265] Now, do you mean to show by this table on which you show no interchange facilities that there would be industries located on the Northern Pacific that, if they routed their traffic via the Great Northern, via the Bieber Gateway, that they might have to pay a switching charge in addition to the line-haul charge? Is that what you mean?

A. Well, you picked out an unfortunate example here. I found out since I prepared this statement, in fact I found out yesterday, that Adrian should not have been shown on Table 6. I should have eliminated—

Q. In fact, you show Adrian in your Exhibit No. 7 as an interchange point?

A. That is right. One of those things that happens in the preparation of exhibits.

Exam. Wright: Do you wish to strike Adrian from Table 6?

The Witness: I would like to, Mr. Examiner.

Exam. Wright: It will be stricken; that is, from Table 6 of Exhibit No. 3 for identification.

By Mr. Farrell:

Q. Well, now, maybe we can clear it up this way.

I direct your attention to page 10 of your prepared statement, the third from the last paragraph in which you state, and I quote:

"Combinations of line-haul rates now apply on shipments between exclusive points on complainants in Table 10 of [fol. 266] Exhibit 3, and exclusive points on Northern Pacific or Union Pacific in Table 6 of Exhibit 3."

Let us take Argo for a moment. Do you mean there the combination rates would apply to certain industries at Argo if they routed their traffic Great Northern via the inside gateway?

A. No.

Q. What do you mean?

A. What page of my statement were you referring to?

Mr. Hobbs: 10.

By Mr. Farrell:

Q. From page 10, and the last paragraph.

I appreciate you have done a great deal of work, Mr. Wadsworth, and I don't mean to cast any aspersions on it, but I simply want to understand what you have done.

A. It is difficult for me to say the same thing over in different words.

Q. I don't ask you to repeat yourself.

Do you mean this, that industries at Argo, Washington, may have to pay a combination rate to send the traffic out over the Great Northern via Bieber with your railroad?

A. No, no. The shipment starts out at Argo, Washington on the Union Pacific. Now, there is no way for that shipment to be switched from the Union Pacific tracks to the Great Northern at Argo since there are no interchange facilities at that point.

[fol. 267] Now, if a shipment were made, were started out from Argo on the Western Pacific and consigned to a point involving a movement via Bieber, combination rates would

have to apply because there isn't anything else to apply on it.

Q. A combination rate of the through-Great Northern rate, plus what?

A. The rate from, the Bieber rate from Argo to the lowest rated point where there was an interchange between the Union Pacific and the Great Northern, or it might be the rate from Argo down to the closest point in California that was nearest to the destination of the complainant.

Q. In other words, it might be a through line haul rate, plus a switch charge, or it might be a combination of separate line-haul rates, is that correct?

A. Well, if it was shipped via Bieber, it would have to be assessed a combination. If it started out at Argo on the Western Pacific, it would never be anything else.

Q. All right. I think now we understand each other.

Now, if the industry on the other hand was located on joint trackage of the Great Northern-Northern Pacific and Union Pacific, if it were in fact located on joint traffic, then would not the through line-haul rate apply via the Great Northern with the joint through rate with you?

A. I have already answered this question two or three times.

Q. I say if the industry is on joint trackage.

[fol. 268] A. Well, if the industry were located on joint trackage—

Q. Would you answer yes or no?

A. The answer would be yes, of course.

Q. All right. Now, our tariff investigation discloses that Argo, Washington is located in the Seattle switching limits, and your Exhibits Nos. 6 and 7, in which you show interchange points, lists Seattle.

Can you explain that for me?

Mr. Treanor: You mean can he explain your information or what he has testified to?

The Witness: Well, I can explain I think what you are getting at.

Mr. Burkett: He doesn't need your help.

A. The mere fact that a shipment may originate at a station which is a substation of another doesn't necessarily mean that—

Mr. Burkett: He is doing fine.

A. (Continuing) —the lowest charge applicable would be a combination of switching and line-haul rates.

Now, it is very conceivable that a shipment could originate at Argo at a team track, and there on the Western Pacific, and in such a case it could not be switched to the Great Northern at Seattle. There would be an extra charge which the Great Northern could not absorb.

By Mr. Farrell:

Q. What would that charge be, a switching charge?

[fol. 269] A. I don't know what it would be.

Q. Do you suggest it might be a local charge, Mr. Wadsworth?

A. It could be an extra charge.

Q. But wouldn't it be a switching charge?

A. By the Union Pacific.

Q. But wouldn't that be a switching charge if it is within the Seattle district switching limits?

A. Not necessarily because, as I point out, for movements within the switching limits, you don't always charge switching rates.

Q. Now, if it isn't a switching rate, what would it be, then, a local charge within the station limits of a single station?

A. There would have to be a charge applicable to it.

Q. But what would that charge be? What would you call that charge?

A. I would call it the lowest line-haul charge.

Q. In other words, you would call it a local line-haul charge applying within the single switching limits of a single station, is that correct?

A. It would be the lowest line-haul charge from Seattle, from Argo to some point beyond Seattle.

Where there is no switching rate applicable, such as from a team track to an interchange track, the only charge that you can use is a line-haul charge.

[fol. 270] Q. Am I to understand that your railroad publishes line haul charges that apply within the limits of a single station?

A. We publish line haul charges which on occasion are applicable to shipments moving within switching limits, and they are applicable in such circumstances for the reason that there is nothing else to apply.

Q. But if my information is correct that Argo, Washington, is within the Seattle, Washington switching distance, then Argo, Washington, should not be included in your Table 6, isn't that correct?

A. No, it is not correct.

Q. Well, what is the fact then?

A. As I testified, I said that Argo is a station served by the Great Northern-Northern Pacific and Union Pacific without interchange facilities.

Q. Do you agree, Mr. Wadsworth, that an interchange point exists at Seattle between the railroads which we are here concerned with, namely, the Great Northern, Union Pacific, Northern Pacific, and for that reason you show it in your Exhibits Nos. 6 and 7?

A. That is right.

Q. But it is also your position that even if Argo is within the station switching limits of Seattle, Washington, that there is no interchange point, is that correct?

A. That is correct, yes. There will be shipments that [fol. 271] could not be switched from the Union Pacific location to the Great Northern interchange.

Q. Now, my investigation discloses that Auburn, Washington, is on joint trackage with the Great Northern and Northern Pacific, and the map, official railroad map of the state of Washington also shows that to be a fact.

Mr. Treanor: What map is that, Mr. Farrell?

By Mr. Farrell:

Q. And I will now ask you, Mr. Wadsworth, what the source of your information on the point we have under discussion—

Mr. Treanor: When you say official railroad map, you mean this map that has, "Northern Pacific Railway," in the righthand corner?

Mr. Farrell: That is right.

Mr. Treanor: Is that what you call official?

Mr. Farrell: That is what I call official, for the purpose of my cross-examination.

The Witness: I indicated certain stations in Table 6 with an asterisk as being located on joint track, and I selected the stations between Portland and Seattle that are on the joint track between those points.

Undoubtedly there could be other sections of joint track. I testified as to that area with which I knew to be a fact. If you know that there are other joint trackage arrangements, as far as I am concerned you can testify to that effect.

[fol. 272] By Mr. Farrell:

Q. Well, what is the source of your information with respect to Auburn? You state in your Table 6 they are not on joint trackage.

Auburn is between Portland, Seattle. My investigation shows it to be on joint trackage, and I ask you, what is the source of your information?

A. If you will tell me that Auburn is on joint track, I will accept your word for it.

Q. All right. If I went down the exhibit and took Bucoda, that is on the joint track of all three lines. Would you also accept my word for that?

A. Well, where is Bucoda?

Mr. Burkett: Well, it is on his exhibit.

By Mr. Farrell:

Q. Bucoda, I will point it out on the map if you want. It is on the map in front of you.

A. If you would.

Mr. Treanor: May I indicate for the record at this time, so that both you and Mr. Wadsworth understand what you mean by joint track, you may but I am not sure that you do.

I think it would help the record, Mr. Examiner, if we would have him testify what he means by joint track, and just be sure that that is what Mr. Farrell also means.

Mr. Farrell: I thought Mr. Wadsworth objected to that on the grounds that I thought or he thought I was being repetitious, but I would be happy to have him testify.

[fol. 273] The Witness: I testified I will accept your word.

Mr. Treanor: I mean, what do you mean when you refer to "joint track"?

The Witness: A little while ago I answered the question by saying that the joint trackage on which I had located these points were the tracks extending between Portland and Seattle.

Now, if I have omitted certain stations, and you say those stations are on that track, that is your privilege.

By Mr. Farrell:

Q. And you will accept my statement, Mr. Wadsworth?

A. I certainly will.

Q. And you will accept it then with respect to Bucoda?

A. Right.

Q. Now, my information also disclosed that Christopher is located on joint trackage.

Would you also agree to that?

A. Yes, sir.

Q. And that Hillcrest—

Mr. Hobbs: Hillhurst.

By Mr. Farrell:

Q. Hillhurst, I beg your pardon—Hillhurst is also on joint trackage. Will you accept that?

A. If you want me to adopt your testimony to that effect, I will do it.

Q. I just want the record straight here.

A. Okay.

[fol. 274] Q. And that Kent is located on joint trackage of the Northern Pacific and Great Northern?

A. Okay, I will take your word.

Q. And that Lakeview is on Northern Pacific and Great Northern trackage?

A. All right.

Q. Will you accept that?

A. Right.

Q. And the same thing is also true with respect to Lowell, McChord Field, Meeker, Mobase, Puyallup, and Rainier is on the joint track of Great Northern and Union Pacific, joint trackage, and that Reservation and Rhodes and Roy, as well as Sumner, Thomas, Wabash, Wetico and Yelm, are also located on joint trackage.

Would you also accept those stations?

A. If you testify to that effect and wanted me to adopt your testimony I would take it.

Q. And that, therefore, on that basis, these other points which we have just mentioned should also have an asterisk in addition to those on which you placed an asterisk when you introduced it yesterday, is that not correct?

A. That would seem to logically follow.

Q. Now, turning to your Table 7, your No. 1 in the first part of No. 1, the joint through rates would apply and the Great Northern would absorb the switch, and that is what you state, isn't it?

[fol. 275] A. If that is what I said—

Q. Yes. And that is because the traffic is what is termed competitive traffic, is it not?

A. Right.

Q. And in the second part of the—that is, "Yes," isn't it?

A. Yes.

Mr. Farrell: And you have it, Mr. Reporter?

The Reporter: Yes, sir.

By Mr. Farrell:

Q. And the second part also under 1, there the Great Northern does not absorb the switch on so-called non-competitive traffic?

A. That is right.

Q. And the Western Pacific also follows that same practice?

A. That is right.

Q. And so does the Southern Pacific?

A. To a certain extent.

Q. Now, whether the railroad will or will not absorb the switch absent an order of the Interstate Commerce Commission is within their discretion, is it not?

A. Yes.

Q. Now, with respect to 2 on your Table 6—

Mr. Hobbs: 7.

Exam. Wright: Table 7.

By Mr. Farrell:

Q. —Table 7, now, if those industries are located on [fol. 276] common trackage or on joint trackage, that industry then would be located on trackage of the Great Northern, and if that were true then there would be through rates available via Bieber to the extent that Great Northern joins in its through rates, would it not?

A. On shipments that were routed out via the Great Northern, but the minute a shipment was routed out via Northern Pacific, the shipper would get stuck.

Q. But if the shipper desires to route it by the Great Northern, he would have a through route via Bieber, would he not, and if he routed Northern Pacific he would have a

through route via Portland and the Southern Pacific, would he not?

A. (No response.)

Q. Doesn't that follow?

A. Right.

Q. And so to the extent that those industries are located on joint trackage, the same thing would be true with respect to them that is true in the case of your No. 1 referred to right above.

A. With the qualification that I gave you, that the minute a shipment was tendered—

Q. I appreciate your qualification.

A. —by the Northern Pacific there would be no through rate, and the shipper in California may send up a northbound shipment and not know what the situation is and specify a Northern Pacific routing to a point in this Table 6, and he would get stuck.

[fol. 277] Q. And in that case I assume the Western Pacific solicitation forces would advise him to route that shipment Great Northern, would they not?

A. It could be that the shipper would exercise his right and route the shipment in accordance with his own wishes.

Q. Now, again, on your Table 7, and No. 3, you say between all points on Northern Pacific and Union Pacific, such as shown on Table 9, and in turning to Table 9 I do not find any point on Northern Pacific or Union Pacific.

What do you mean?

A. Table 12.

Mr. Burkett: I didn't hear the answer.

(Record read.)

The Witness: Table 12.

By Mr. Farrell:

Q. So we should strike Table 9 and substitute Table 12, should we?

A. Just a minute.

It should be Table 12.

Exam. Wright: You wish to make that correction?

The Witness: I would like to.

Exam. Wright: Table 7 of Exhibit 3 in the third section will be changed to read, "Table 12," instead of "Table 9."

By Mr. Farrell:

Q. Now, turning, then, to Table 12, I find that you have listed Bellevue as a station local to the Northern Pacific, [fol. 278] and therefore you assert that rates would not be available via the Bieber Gateway.

Isn't Bellevue, so far as the Great Northern is concerned, within the station limits of Seattle, Washington?

A. The answer to your question I think is in my testimony on page 14, the last paragraph.

Q. In other words, that could be routed Great Northern and the Great Northern would have absorbed the switching charge of the Northern Pacific?

A. I think that is true with respect to certain locations at Bellevue. I do not know whether it is true as to all points at that station or not.

Q. And that, therefore, rather than fall in Category 3 on Table 7, as you show it at the present time, it should be up in Category 1, namely, Northern Pacific and Union Pacific points common with Great Northern, and having interchange with Great Northern, as per Table 5.

A. If a shipment were made from San Francisco to Bellevue, routed via Bieber, to Portland, along Northern Pacific, then the combination rates would apply. There is no through rate. A shipment could be made from San Francisco to Bellevue routed Southern Pacific to Portland, and Northern Pacific, and that is what we are after.

Q. But you say Table 7, category 3, that the only routes available between those points now—we are not talking [fol. 279] about rates—between both points, and we have to turn to your Table 12, and your local points are combination rates via Bieber, and so far as Bellevue is concerned haven't we established; and you say at page 14 of your prepared statement that through routes are available via

Bieber and, therefore, Bellevue should fall back in Category No. 1, not Category No. 3.

A. It is still a combination of rates, Mr. Farrell.

Q. So far as a shipper is concerned, the shipper pays a single through charge, does he not?

A. (No response.)

Q. If you had the relief which you seek here, would the rate to that shipper be any lower?

A. It would be—there would be times when it would be quite a lot lower, sure. When he chose to route the shipment into Bellevue over the Northern Pacific, he had a through rate and a through route via Bieber.

It would cost him considerably less than if he chose to route the shipment into Bellevue now with a line haul via the Northern Pacific.

Q. Your Category 1, Mr. Wadsworth, at Table 7, you say Northern Pacific or Union Pacific points common with Great Northern and having interchange with Great Northern, per Table 5.

Now, that is Bellevue, Washington, is it not?

A. I couldn't find anywhere where the Northern Pacific [fol. 280] or the Great Northern published an interchange at Bellevue in the tariff filed with the Commission.

Q. So is it your testimony then that Bellevue is a local station on the Northern Pacific, and that there is no way a shipment can be routed out of Bellevue via the Great Northern Railroad? Is that your testimony?

A. Well, I just call your attention to my testimony on page 14.

Q. I am aware of that.

A. Why should I contradict myself now, then?

Q. I just suggested—well, strike that.

Now, with respect to Bremerton, Washington, your Table 12 you have that down in No. 3. Aren't you aware of the car-ferry service so that shipments from Bremerton could be routed via Bieber and, therefore, that would be back in Category 1 of Table 7 and not Category 3?

A. I am testifying that when shipments are routed into Bremerton via the Northern Pacific, combination rates ap-

ply. I am not testifying about any routing using a car ferry.

Q. And that is your testimony with respect to both these stations we have just discussed?

A. You are talking about Bremerton, aren't you?

Q. Yes, sir.

A. There is no car ferry at Bellevue, that I know of.

Q. Now, doesn't the Milwaukee participate in rates via Bieber?

[fol. 281] A. To some places.

Q. In the case of Ellensburg and Hoquiam on your Table 12, you show that as served by your Milwaukee road, don't you?

A. Yes.

Q. Wouldn't through routes, through charges be available over the Milwaukee via the Bieber Gateway?

A. I think I so testified.

Q. But you have down in Category 3, do you not, combination rates apply rather than Category 1?

A. Again I will have to say for your benefit apparently that if a shipment were routed into Bremerton via the Northern Pacific there would be nothing but a combination, or into Ellensburg via Northern Pacific there would be nothing but a combination via Bieber.

Q. Well, Mr. Wadsworth, then on that basis we should have no Category 1, isn't that true?

A. (No response.)

Q. In other words, so far as you are concerned, to none of these points then are the through rates. Why do you have the Category 1, then?

A. You mean Category 1—

Q. Category 1 in Table 7, your category—

Mr. Treanor: You mean Table 7, Mr. Farrell?

Mr. Farrell: Table 7.

The Witness: I am sorry, I don't understand your question.

[fol. 282] Mr. Farrell: Read my question.

Exam. Wright: The reporter will read the question.

(Question read.)

Mr. Treanor: Well, for clarification do you mean he is talking about the through rates with you fellows, and Union Pacific to Category 1?

Let us make sure we are talking about the through rates to the Great Northern to these points, or to the Northern Pacific with Union Pacific.

Mr. Farrell: For the record, just so we understand it, Category 1 of Table 7 lists points, does it not, Mr. Wadsworth, Northern Pacific or Union Pacific points in common with the Great Northern, and having interchange.

By Mr. Farrell:

Q. You are assuming there that shipments would be routed via the Great Northern, and there would be through routes via Bieber, plus a switching charge of the Union Pacific and Northern Pacific which, in the case of competitive traffic—

A. No, I am not.

Q. —which in the case of competitive traffic the Great Northern would absorb; in the case of non-competitive traffic the Great Northern would not absorb, but you are assuming in all cases the Great Northern would get the line haul in setting up Category 1, are you not?

A. Yes, sure.

[fol. 283] Q. The answer is—

Exam. Wright: Yes.

The Witness: Yes.

* * * * * * *

[fol. 284] By Mr. Farrell:

Q. Well, now, Mr. Wadsworth, to the extent that there are stations listed on Table 12 of your Exhibit 3 that are served by the Great Northern Railroad, those points should

actually be included in Category 1 of your Table 7, isn't that correct?

The Witness: Can I have that question again, please?

Exam. Wright: The reporter will read the question.

(Question read.)

A. There aren't any stations on Table 12 that are served by the Great Northern.

By Mr. Farrell:

Q. Your testimony is that if there are, they should be in Category 1 of Table 7, but there are no such stations, is that correct?

A. (No response.)

Q. Is that your testimony?

Mr. Treanor: I believe, Mr. Examiner, that his testimony was flatly, there are no such stations.

Exam. Wright: That is right.

[fol. 285] Mr. Farrell: May I have an answer to my question, Mr. Examiner? I think my question is perfect.

Exam. Wright: Would you read the question, Mr. Reporter?

Mr. Farrell: Would you read my question, Mr. Reporter?

(Question read.)

By Mr. Farrell:

Q. Do you understand what I have said, Mr. Wadsworth?

A. No, I didn't understand the question.

Q. I said if there are listed in Table 12 stations which are served by the Great Northern Railroad, then those points would be included in Category 1 of Table 7, not Category 3. You agree with that, do you?

A. No.

Exam. Wright: He answered the question.

Mr. Hobbs: He answered it, "No."

By Mr. Farrell:

Q. Mr. Wadsworth, in Category 1 of Table 7 you list the points that are served by the Great Northern Railroad which have rates via Bieber to points on your railroad, is that not correct?

A. Right.

Q. And in Category 3 you include other points on the Northern Pacific and Union Pacific that are not served or reached by the Great Northern Railroad, is that correct?

A. Right.

Q. Now, the difference between 1 and 3 is that 1, that [fol. 286] point is served by the Great Northern Railroad, 3, it is not, isn't that correct?

A. That is right.

Q. So that if there are included in Table 12 stations which are reached and served by the Great Northern Railroad, then they should be in Category 1, not Category 3, I say, if there are.

A. It is like asking me the question, "If black is white, why, you could write on it."

Q. We may establish that, too, before we are through, Mr. Wadsworth.

Mr. Treanor: Do you want to bet?

Mr. Farrell: May I have an answer to my question?

The Witness: The only answer I can make to your question is, no.

By Mr. Farrell:

Q. The only answer you could make to my question is, no?

A. Because there aren't any stations on Table 12 that are on the Great Northern.

Q. Is it your testimony, Mr. Wadsworth, that the Great Northern Railroad, that industries located at Bellevue, Washington, cannot route shipments out over the Great Northern Railroad in line haul service to be routed in

through rates via Bieber? Is that your testimony, that this cannot be done?

A. That is not my testimony.

Q. A shipper can route a shipment out of Bellevue in [fol. 287] line haul service by the Great Northern Railroad in line haul service, can he not?

A. He would have to route the shipment, he would have to offer the shipment to Northern Pacific first because Northern Pacific serves Bellevue.

Q. Is it your testimony that the shipper located at Bellevue, Washington, cannot route a shipment out over the Great Northern Railroad in connection with the Bieber Gateway, is that your testimony?

A. For the second time, the answer is no.

Q. Just so we understand one another, a shipper located at Bellevue can send his cars out routed line haul service via the Great Northern routed via Bieber through rates, through charges, with the Great Northern Railroad. That is correct, isn't it?

A. He is to offer that shipment to the Northern Pacific first.

Q. What do you mean, he has to offer it to the Northern Pacific first?

A. Because Bellevue is on the Northern Pacific.

Q. But Bellevue is also served by the Great Northern Railway under the line haul rates, and they absorb the switching charge of the Northern Pacific, do they not?

A. To an extremely limited extent.

Q. Name a shipment on which the Great Northern Railway would not absorb the switching charge of the Northern [fol. 288] Pacific, a shipment consigned to or originating at Bellevue, Washington, and routed in connection with your line via the Bieber Gateway, if such there be.

(Short pause.)

A. I can answer the question now.

Exam. Wright: You may answer.

The Witness: The Great Northern absorption of Northern Pacific's switching charge is published in a tariff of the Great Northern Railway. It covers the situations on which, which are subject to those absorptions.

Now, any situations not named would not be covered, of course.

By Mr. Farrell:

Q. There are a number of places named where it is absorbed, where the Great Northern absorbs the switching charge, and there are also other points where they would not, is that correct?

A. The tariff speaks for itself. You have the tariff, I assume.

Mr. Treanor: For clarification, Mr. Wadsworth, is that the tariff you refer to on page 14 of your prepared statement?

The Witness: Yes.

By Mr. Farrell:

Q. Now, in connection with Bremerton on Table 12, cannot a shipment be routed out of Bremerton via the Great Northern Railroad?

A. No.

Q. If that shipment was routed via the Great Northern [fol. 289] Railroad, the Bieber Gateway, what rates would apply?

A. I said the shipment could not be routed out of Bremerton via Great Northern since the Great Northern does not serve Bremerton, so the rest of your question has no meaning whatsoever.

Q. You are not familiar with the car-ferry service into Bremerton?

A. The Great Northern does not operate that car-ferry service as a part of the Great Northern.

Q. And it is your testimony then that there are not

through rates applying then to Bremerton via the Great Northern in connection with this car-ferry service?

A. My testimony is there are not any rates through Bremerton via the Northern Pacific.

Q. I spoke of the Great Northern Railway, Mr. Wadsworth, and is it your testimony now that through rates do not apply from Bremerton via the car-ferry, via the Great Northern Railway, via the Gateway; is that your testimony?

A. I can tell you this, that the Great Northern has rates via Bieber from Bremerton operating in connection with an independent barge line, and receipt of freight at Bremerton over such a route is by the barge line, and certainly not by the Great Northern.

Q. Do through routes, through rates apply?

A. Certainly.

[fol. 290] Q. And that applies for routing via the Bieber Gateway?

A. Yes.

Exam. Wright: The answer was yes.

By Mr. Farrell:

Q. And that the—that would also apply in connection with Renton, Pacific Coast Railroad?

A. No, Renton is not served by a barge line.

Q. Renton is served by the Pacific Coast Gateway, is it not, Mr. Wadsworth?

A. Yes, sir.

Q. And isn't the Pacific Coast Railroad the owner of the Great Northern Pacific, the Short Line connection?

A. I don't know.

Q. You don't know?

A. (No response.)

Q. You don't know whether it has a short line connection with the Great Northern?

A. It has a short line connection, of course.

Q. You don't know who owns it?

A. No, sir.

Q. Now, turning to your Exhibit No. 9, page 1, the first line under Column 5, miles, 1161, that is not the mileage via the route sought in this complaint, is it, Mr. Wadsworth?

A. That is true.

Q. This is the mileage via the rate making mileage over Moscow, Idaho, is it not?

[fol. 291] A. Right.

Q. And if I asked you the same question with respect to Line 14, the figure 997, the answer would be the same?

A. That is true.

Q. And if we asked a great number of questions going through the entire exhibit dealing with that particular aspect and phase thereof, the answer would be the same?

A. The question is too indefinite.

Q. Mr. Wadsworth—

A. I can't answer it.

Q. Mr. Wadsworth, where you have shown the mileage and the route using the mileage—strike mileage—showing the route in connection with the Western Pacific, and you arrive at mileages which are substantially shorter than those in connection with the Southern Pacific, is it not a fact that at all points through this entire Exhibit No. 9 that those mileages are the mileages which you have used for rate-making purposes, and not the mileage which represents the actual route of movement over the routes here sought in this complaint?

A. Would you be more specific?

Mr. Farrell: Would you read the question back, Mr. Reporter?

Exam. Wright: The reporter will read the question back.

(Question read.)

Exam. Wright: I think it is clear.

Mr. Farrell: Thank you, Mr. Examiner.

[fol. 292] The Witness: I think there is an error in the first part of the question, if I understand it correctly.

You asked me where the distances over the route of the Western Pacific are shorter than over the Southern Pacific.

I don't think you mean that, and that is what is throwing me now.

By Mr. Farrell:

Q. Let us try it again.

On your Exhibit No. 9, which consists of some 44 pages, you have shown mileages in connection with the roads involved in this proceeding, showing mileages via the Western Pacific, and also mileages via the Southern Pacific, and where you have shown two mileages in connection with the same route embracing the Western Pacific, one of which is in all cases substantially shorter than the other, that shorter mileage is the mileage used to compute the route.

Mr. Hobbs: Rate.

By Mr. Farrell:

Q. Compute the rate, and does not represent the mileage over the route sought in this complaint.

A. The rates here involved were not computed on mileages. Your question presupposes that the rates were based on mileages. Well, that is not a fact. The rates were obtained without regard to the distance. The distance has no determination in whether the rate is 95½ or a dollar nine. These are not mileage rates.

Q. Now, that is your answer to my question, Mr. Wadsworth?

[fol. 293] A. The way I understand the question.

Q. In connection with your Exhibit 9, page 1, line 1, the mileage of 1161, over what route is that mileage computed?

A. It is my understanding that that is computed as follows—

Q. Did you prepare this exhibit, Mr. Wadsworth?

A. It was prepared under my supervision.

Q. All right.

A. It is my understanding that this—

Exam. Wright: Keep your voice up.

A. (Continuing) —Northern Pacific from Johnson, Washington to Moscow, Idaho, Great Northern from Moscow, Idaho to Beiber, Western Pacific to Oakland.

By Mr. Farrell:

Q. That is not Great Northern via Portland, then, is it?

A. No.

Q. That would be Great Northern via Wishram, would it not?

A. It is Great Northern. It is the distance published by the Great Northern Railway.

Now, what the internal routing is on the Great Northern I can't tell you.

Q. Once the Great Northern takes that shipment at Moscow, Idaho, over what route did you compute that mileage in order to get to Bieber, California?

A. There was no computation necessary. I looked on the mileage table for the distance from Moscow to Bieber, and [fol. 294] there it was.

Q. But you don't know whether that is the mileage of the Great Northern Railroad from Moscow up around by Everett, Washington, and down to Vancouver, and from Vancouver back to Wishram, and Wishram to Bieber, or whether it is computed some other way, is that correct?

A. I took the distance that was published in the distance tariff.

Q. So is it your testimony, then, Mr. Wadsworth, in computing this mileage you have taken it from the distance tariff, and you do not know whether that mileage represents the mileage over which the shipments would route, over which the shipments would actually move if your company secured the relief which it seeks in this complaint?

A. Well, in the first place, Mr. Farrell, the route in line 1 on this page of the exhibit that you have been quizzing me about has no connection with the route that we are seeking in this case.

The route in line 1, as I explained to you, was Northern Pacific to Moscow, then Great Northern; whereas, in this case we are seeking rates Northern Pacific to Portland.

Q. All right. What about the next figure, then, 1491?

A. That is it.

Q. That is what?

A. That is the distance via Portland.

[fol. 295] Q. That is the distance via Portland?

A. Yes.

Q. And out of what mileage table did that come, from what point?

A. Well, from Johnson to Portland, out of the Northern Pacific table, from Portland to Bieber out of the Great Northern, from Bieber to Oakland, the distance was published in the Western Pacific's distance table.

Q. Is the same thing also true with respect to lines 14 and 15; in other words, the figures 997 and 1328?

A. If you mean that is the distance of 997 computed via Northern Pacific to Moscow, thence Great Northern, whereas the distance of 1328 is computed Northern Pacific to Portland, thence Great Northern, the answer is yes.

Q. In other words, to make a long story short, if this shipment were routed via the Great Northern Railroad, it would move 997 miles, is that correct?

A. No, because you can't route a shipment from Johnson to Sutter via the Great Northern, since Johnson is on the Northern Pacific.

Q. Well, he could route it, but a combination rate would apply over the point.

A. Right.

Q. That is correct, is it?

A. Right.

[fol. 296] Q. Now, turning to page 13 of your prepared statement, is Yuba City a local point on the Western Pacific?

A. No.

Q. What other railroad serves Yuba City?

A. Yuba City is located on the Sacramento Northern Railway and the Southern Pacific.

Q. And the Sacramento Northern is wholly owned by Western Pacific?

A. Right.

Q. Now, do interchange facilities exist between the two roads at that point?

A. No.

Q. Now, at page 18, the second full paragraph, you state that the Santa Fe, Great Northern and Western Pacific are working partners via the Bieber route. For how many years has that been true?

A. Since 1931.

Q. And for 30 years then have the three lines had a complete interchange of information and utilization of joint solicitation for traffic via those routes?

A. I don't know how long it has been in effect, but my testimony is to the effect that this is the situation at the present time.

Q. Well, in view of that situation, if my road, the Northern Pacific, had in joint rates with your road to Great [fol. 297] Northern common points, you would still be soliciting traffic via the Great Northern Railroad, would you not?

A. (No response.)

Q. Isn't that one of the economic facts of life about this case?

A. I don't understand the question.

Mr. Farrell: Read the question, Mr. Reporter.

Exam. Wright: Mr. Reporter, read the question.

Mr. Treanor: Mr. Examiner, I have no objection to this witness answering to the extent of his ability here, but we can get our chief solicitation man on to answer it, if he really wants the answer.

Mr. Farrell: That is a suggestion, and we will take it under advisement.

(Question read.)

Exam. Wright: If you know the answer.

The Witness: There is no other way that we could solicit because the only way we could get into a point on the Northern Pacific is over the Great Northern.

We have no other connection between, there is no other connection between the Western Pacific and the Northern Pacific but the Great Northern, and our solicitation efforts have to be with the Great Northern.

By Mr. Farrell:

Q. In other words, your company would still continue to work with the Great Northern, is that correct?

[fol. 298] A. What is the rest of the question?

Q. I said even if my company had, and in some cases my company does in some limited cases, does have joint rates to Great Northern common points, you would still continue to solicit and work with the Great Northern, would you not?

A. I don't know.

Q. You don't know?

A. (No response.)

Q. Turning to your Exhibit 3, Table 18, specifically the second shipment, soap, the fourth shipment celery, and the fifth shipment canned goods, all routed to Seattle, the Great Northern serves Seattle, does it not?

A. Yes, it does.

Q. So that shipment in those cases would not be routed Northern Pacific, would it?

A. But they were routed Northern Pacific.

Q. Let us take the first one. This shipment was routed San Jose to Stockton, is that right?

A. I assume that is correct.

Q. And then it is routed Great Northern to Seattle?

A. No.

Q. Well, Western Pacific—

Mr. Treanor: Well, let's not leave them out altogether, Frank.

(Laughter.)

[fol. 299] By Mr. Farrell:

Q. Then it is routed Western Pacific to Stockton, to Bieber, Great Northern-Seattle?

A. Right.

Q. And haven't we established at this point, and please correct me if I am wrong, and I am not being facetious, that Bellevue is within the station limits for purposes of the Great Northern at Seattle, and did this car not move into Seattle via the Great Northern Railroad?

A. As far as I recall, you have not established what you claim to have established physically, namely, that Bellevue is within the switching limits of Seattle.

Q. For purposes of the Great Northern Railroad?

A. We haven't established that, because it isn't true.

Q. What revenue if any on shipments 2, 4 and 5 did the Northern Pacific derive, if you know?

A. Well, I don't know. I have no way of telling.

Q. You have no way of knowing?

A. Right.

Q. You have no way of knowing that they derive simply a switch charge, and that that was absorbed by the Great Northern, is that correct?

A. It is my information, and I can check it, that there is no switch charge on furniture—no, the furniture is to Spokane. This switching charge that you speak of has an extremely limited application. It only applies on some com-

[fol. 300] modities and doesn't apply on others.

It only applies for certain locations in Bellevue, and doesn't apply at others.

Q. With respect to these three shipments, did you make any investigation to determine whether or not the Northern Pacific received a portion of the line haul revenue or local charge, or simply a fixed charge which was absorbed by the Great Northern?

A. No, sir, because that was not the purpose of this Table 18.

Q. Thank you.

A. That is all right.

Q. Now, with respect to the last shipment, newsprint, showing the route Western Pacific-Tacoma, Great Northern-Western Pacific, what have you to say with respect to that route?

A. That is a misprint. It should be Northern Pacific to Tacoma.

Exam. Wright: Which one is this?

In the last shipment on Table 18 the Western Pacific is changed to read Northern Pacific.

Mr. Pfrommer: That is the first "Western Pacific" in that?

Exam. Wright: The first "Western Pacific" yes. It will read, "Northern Pacific-Tacoma."

By Mr. Farrell:

Q. Now, page 29 of your prepared statement, you make reference to the rates, through rates via Bieber Gateway, published with the Northern Pacific and Union Pacific, from [fol. 301] Roseville and Decoto, California, from points involved within the scope of this complaint.

Those rates were established, as you say, without the necessity of a Commission order, isn't that correct?

A. That is correct.

Q. And since those rates were established, has there been a single car of automobiles that has moved, and is it not a further fact that the plant was never even located there?

A. The answer is yes, because it took so long to get these rates published that the need for them had faded out.

Q. When did the shipper first approach your company and request that you join in the publication of through rates via Bieber?

A. Are you talking about automobiles, or what are you talking about?

Q. I am talking about automobiles, yes, sir.

Mr. Treanor: You mean the potential shipment, isn't that right, Mr. Farrell, for clarification?

Mr. Farrell: I think he is perfectly clear on what I am talking about.

Mr. Treanor: I would like to be clear so that I understand your question, Mr. Examiner, so that if I want to make an objection I can make it.

Exam. Wright: I don't understand the question.

Mr. Farrell: I will withdraw the question.

By Mr. Farrell:

Q. This complaint was filed in July 1959. What automo-
[fol. 302] bile company was involved?

A. General Motors.

Q. What division of General Motors?

A. Chevrolet.

Q. When did they first request your company to secure for them a line of joint through rates via Bieber?

A. I don't know.

Q. You don't know that?

A. (No response.)

Q. Did they at any time or at any point enter into any industrial lease for the location of their plant on your road at these points?

A. I don't know.

Q. When were joint through rates published, when were they effected?

A. (No response.)

Mr. Farrell: I will withdraw that question. I see the answer.

By Mr. Farrell:

Q. I think it is clear, is it not, Mr. Wadsworth, that within less than three months after the complaint was filed by your company these rates were published, is that not correct?

A. I don't know.

Q. These rates, and I quote now from your own statement, "were initially published effective October 5, 1959."
[fol. 303] I will skip the rest of that sentence.

"The complaint was filed in July 1959."

A. (No response.)
Q. Isn't that a fact?
A. That is right. That is what I said on page 29.
Q. Turning to Table 5, of your Exhibit 3, isn't it true that at Vancouver, Washington, Chehalis, Washington, Centralia, Washington and Bend, Oregon, that all industries at those four stations are located on the Great Northern Railroad?
A. I didn't testify to that effect.

Mr. Farrell: May I have an answer to my question?
Exam. Wright: He is asking you.

By Mr. Farrell:

Q. I—
A. I don't know.
Q. I am asking now.

Exam. Wright: He says he doesn't know.

By Mr. Farrell:

Q. You don't know?
A. No.
Q. In other words, before determining whether or not it would be necessary to use an interchange at that point, you made no investigation to determine what industries if any were located upon the trackage of railroad which you presently have joint through rates with via Bieber, is that correct?
A. Yes.

Mr. Farrell: I have nothing further.
[fol. 304] Exam. Wright: Any further cross?
Mr. Burkett: Yes.
Exam. Wright: Mr. Burkett.

By Mr. Burkett:

Q. Would you please turn to your Exhibit No. 11.

Now, I note there that you give certain traffic figures for west of Transcontinental via Bieber. Would you please state the origins and destinations of the traffic there shown?

A. They are in the territory west of Transcontinental.

Q. Well, would that include a shipment originating in California and terminating in California?

A. No, sir, because that shipment couldn't—the answer is, no.

Q. Well, then, would you state, please, where the break point is? Why does it not include traffic which is originating and terminating in California?

A. I think there are rates published in connection with the Santa Fe, via Bieber, to points in California. There was no movement under those rates, so there would be nothing in this exhibit that would come into that category.

Q. When the Santa Fe furnished you these figures, did they furnish a breakdown of the states of origin and destination of the figures there shown?

A. The exhibit shows that, or my statement was to the effect that the statistics furnished by the Santa Fe were [fol. 305] confined to movements between California and Oregon and Washington. I believe I testified to that effect.

Q. All right. Now, I am talking about the figures shown on line 1 of your Exhibit No. 13. Were those figures limited to traffic moving between California on the one hand, and Oregon and Washington on the other hand?

A. Line 1, Column what?

Q. Your Exhibit No. 13.

A. Well, Column 2 of line 1 includes traffic moving between California and Oregon, Washington, Northern Idaho. It probably included some Montana.

Exam. Wright: Are you talking about Exhibit 11 or Exhibit 13?

Mr. Burkett: I have been asking my questions about Exhibit No. 13.

The Witness: You said Exhibit No. 11.

Exam. Wright: You started on No. 11.

Mr. Pfrommer: Which are you?

Mr. Burkett: Well, let's go back to Exhibit No. 11, then, please.

By Mr. Burkett:

Q. Now, would you please state the states covered by the figures shown on line 1 on Exhibit No. 11?

A. What figure?

Q. Pardon me?

A. What figure? I don't understand the question.

[fol. 306] Q. The figure of 16,501 cars via Bieber.

A. That is line 1, column 2?

Q. Yes, sir.

A. Traffic moving west of Transcontinental territory via Bieber?

Q. Yes, sir.

A. That is the answer.

Q. Does it include traffic, does the figure shown there include traffic moving to and from the Western portions of North Dakota and South Dakota?

A. No.

Q. Doesn't the Transcontinental Line to which you refer cut across the states of North Dakota and South Dakota?

A. I think this included only as far as Montana.

Q. Well, do you know, or do you think?

A. Yes, as far as Montana.

Q. All right. Well, now, how about Canada?

A. It contained some movement into British Columbia.

Q. How about movements to and from Arizona?

A. They were included.

Q. How about movements to or from Western New Mexico?

A. They were—they could have been included had there been any movements.

Q. Well, do you know whether there were any movements or not?

A. I can't testify that there were any movements from [fol. 307] New Mexico into this territory.

Q. Now, would you please state why it was you requested this material from the Santa Fe with respect to movements in all of western territory, west of transcontinental, rather than just the states which are in issue in this complaint?

A. As I recall, I did request the information of the Santa Fe as you speak of.

Q. From whom—to whom did you make the request in the Santa Fe?

A. Mr. Hudson's office.

Q. And then in what form did Mr. Hudson's office give you the material?

A. He gave me the information as to years, by years, by direction, northbound versus southbound. That was it.

Q. To whom in Mr. Hudson's office did you talk?

A. Pardon me?

Mr. Pfrommer: I think it ought to be made clear at this point as to what may have been occasioned by conversation between counsel and what may have taken place between the witness and somebody else.

Mr. Treanor and I have had discussion about that, and I think your question might be properly directed to either of us.

Mr. Burkett: Well, I can cross-examine this witness concerning figures he listed in his exhibit. I am trying to avoid cross-examining the person who does not have knowl-
[fol. 308] edge about these figures.

Mr. Treanor: Well, I haven't interrupted, but I made the request.

By Mr. Burkett:

Q. Well, Mr. Wadsworth, do you know anything about these figures at all?

A. I have certainly testified concerning them.

Q. I appreciate that, but where did you get these figures that you put in your exhibit?

A. I told you they were furnished to me by the Santa Fe.

Q. And who on the Santa Fe furnished you the figures?

A. I told you that they came to me from Mr. Hudson's office.

Q. On what day, about?

A. I don't know.

Q. Now, would you please state why it was—strike that, please.

Your original request covered from California on the one hand, and the states of Oregon and Washington on the other hand?

A. Those states were included in the area that we asked the information for, sure.

Q. The Santa Fe then gave you different information than the information you requested?

A. Right.

Q. Did the Santa Fe indicate to you that they did not have available the information you had requested for movements between California on the one hand, and Oregon and [fol. 309] Washington on the other hand?

A. Are you asking me?

Q. I am asking you, sir.

A. If the Santa Fe told me that they did not have information available concerning movements between California and Oregon and Washington?

Q. Yes, sir.

A. If your question is that—

Q. That is my question.

A. —they furnished the information as to those movements.

Q. But the only information they furnished you were figures which included these other states of Arizona, Montana and Canada?

A. No, the Santa Fe figures did not include those states. As I said in my testimony, Mr. Burkett, the Santa Fe's information or statistics covered the movements between California and Oregon and Washington.

Q. Well, now, in your own—the other figures you got from your own accounting department covered these west of transcontinental figures?

A. That is true.

Q. And why is it that you did not get from your own accounting department figures showing movements between California on the one hand, and Oregon and Washington on the other hand?

A. I didn't choose to. That was not the purpose of my exhibit.

[fol. 310] Q. Well, what was the purpose of your exhibit?

A. (No response.)

Q. I am talking about Exhibit No. 11 now.

A. I testified on page 17 of my statement concerning the purpose of Exhibit No. 11, page—

Mr. Farrell: 17.

The Witness: Page 16, I meant to say, commencing at the bottom line.

By Mr. Burkett:

Q. Well, was it the purpose of this exhibit to analyze the traffic which moves between the points in issue in this proceeding, between California on the one hand and Oregon and Washington on the other hand, or between all points in western Transcontinental territory?

A. The latter, as indicated by Exhibit 11.

Q. Inasmuch as this proceeding involves movements only between California on the one hand, and Oregon and Washington on the other hand, why did you put in this, choose to put in this exhibit figures showing all movements west of Transcontinental?

A. Because our statistics were not kept in the same manner as the Santa Fe's. They were not segregated.

Q. And you do not have available any studies which would indicate what your movements were via Bieber between California on the one hand, and Oregon and Washington on the other hand?

A. We had a witness yesterday who testified on that point.

Q. But in preparing your Exhibit No. 11, you did not [fol. 311] choose to use that material?

A. That is true.

Q. Now, if I asked you the same questions concerning the meaning of west of Transcontinental Territory via Bieber, shown on your Exhibit No. 12 and your Exhibit No. 13, would your answers be the same?

A. Yes, the words "west of Transcontinental," where used in Exhibit 13 or 12, means the same as it did in Exhibit 11.

Q. Well, in Exhibits Nos. 12 and 13, that would include, also, the states of Nevada and Utah, would it not?

A. Correct.

Q. And also the western part of Colorado?

A. All western Transcontinental traffic.

Q. Well, now, let's look at line 1 of your Exhibit No. 12 where you have 61,500—I beg your pardon—where you have a total movement shown there transcontinental of 61,521 cars. Would that include traffic which you might move from Salt Lake City via Bieber to Portland?

A. 61,521?

Q. Yes.

A. That would include cars that moved from Salt Lake City to Portland, via Bieber.

Q. Now, would that also include traffic which moved from California to Portland?

A. Yes.

[fol. 312] Q. Would it also include traffic which moved from Montana via Bieber?

A. True.

Q. Would it also include traffic which moved from Canada to California?

A. British Columbia to California, yes.

Q. Now, would you please turn to page 30 of your statement. You refer there to these rates on sugar from Clarksburg, California, to Walla Walla. Where did those rates provide for interchange between Sacramento Northern and Southern Pacific?

A. I believed they interchanged at Sacramento.

Mr. Burkett: That is all I have, thank you.
Exam. Wright: Any further cross-examination?
Mr. Hobbs: No.
Exam. Wright: Any redirect?
Mr. Treanor: There will be, very short, if I may have a two-minute recess, Mr. Examiner. I can shorten it considerably.
Exam. Wright: We will take a ten-minute recess.

(Short recess.)

Exam. Wright: Come to order, please.
Mr. Treanor?
Mr. Treanor: Yes, sir.

Redirect examination.

By Mr. Treanor:

Q. One of the questions I am going to ask on redirect has to do with part of Mr. Farrell's—

[fol. 313] Mr. Hobbs: Frank?
Mr. Farrell: Sorry, Mr. Examiner.

By Mr. Treanor:

Q. Mr. Wadsworth, direct your attention to your Exhibit 3 and Table No. 6 thereon, and particularly with respect to some of the questions directed to you by Mr. Farrell, having to do with whether or not a great number of these points should also be marked to show that they are located on joint track.

Now, I ask you whether they are on joint track or not, will it have any bearing whatever on your testimony that these are stations served by the shown lines without interchange facilities?

A. It will not change my testimony.

Q. Now, just for clarification, Mr. Wadsworth, during cross-examination by Mr. Burkett, he asked you, as I recall his questions, with regard to the figures that were

supplied to you by the Santa Fe Railroad, and I believe he inquired as to the territory covered by the Santa Fe figures. This may or may not be clear in the record. Would you please explain simply what territory exactly is covered by the figures supplied to you by the Santa Fe?

A. It is traffic to or from points in California on the Santa Fe on the one hand, and on the other traffic to or from points in Oregon or Washington.

Mr. Treanor: Thank you. That is all I have, sir.

[fol. 314] Exam. Wright: Any redirect examination?

Mr. Burkett: Yes.

Mr. Farrell: I have one.

Mr. Burkett: Go ahead.

Recross examination.

By Mr. Farrell:

Q. Mr. Wadsworth, to the extent that these industries are located at joint trackage in connection with Table 6 of your Exhibit 3, so that they would be local to the Great Northern Railroad, there would be no need for an interchange in order for them to route that traffic on through rates via Bieber, isn't that correct?

Mr. Treanor: Excuse me. For clarification, Mr. Farrell, do you mean on the Great Northern?

Mr. Farrell: Read the question.

Exam. Wright: The reporter will read the question.

Mr. Farrell: And if it isn't clear, counsel, I will be happy to reframe it.

(Question read.)

Mr. Treanor: I am not clear, Frank, whether you mean routed Great Northern through routes—isn't that what you mean?

Mr. Farrell: I think that would follow, yes.

By Mr. Farrell:

Q. Isn't that correct?

A. As to shipments originating at or terminating at locations on the Great Northern, there would be no need for [fol. 315] interchange at those stations because that traffic could be handled via Bieber with delivery at Great Northern locations or with the point of origin at the Great Northern location.

Mr. Farrell: I have nothing further.

By Mr. Burkett:

Q. Now, I would like to get back to the Santa Fe figures. Would they include traffic moving from points served by the Southern Pacific, such as Salinas, California?

A. No, it couldn't possibly.

Q. Would they include the traffic moving to or from Klamath Falls, Oregon?

A. I think, yes, it could.

Q. Would they include figures on traffic moving to and from Bend, Oregon?

A. If there were any shipments.

Q. Would they include figures on traffic moving to and from Portland, Oregon?

A. Yes.

Q. And even though the figures furnished by the Santa Fe were so limited to these three states, the Western Pacific figures which you have used to make the computations on Exhibit No. 11 were taken from the wider territory which we discussed?

A. That is true.

Mr. Burkett: That is all.

Exam. Wright: Do you have anything further?

Mr. Treanor: I have nothing further, sir.

[fol. 316] OFFERS IN EVIDENCE

I would like to offer into the record Mr. Wadsworth's Exhibits 1 through 16, inclusive.

Exam. Wright: Any objections?

Mr. Burkett: No, Mr. Examiner, but I just have one other question I would like to develop with Mr. Wadsworth here on a matter of recross-examination, and that has to do with the Santa Fe figures that were furnished.

By Mr. Burkett:

Q. Didn't those Santa Fe figures which were furnished cover Southern Pacific movements by way of the Southern Pacific routes?

A. Yes.

Q. Is that correct?

A. They include all the shipments which the Santa Fe handled—

Q. With the Santa Fe?

A. Southern Pacific and Western Pacific.

Q. Therefore, they would include shipments which might be routed Fresno to Stockton by Santa Fe, and then Southern Pacific from Stockton to Portland?

A. True.

Q. And would they include shipments which moved by Santa Fe from San Diego to Los Angeles, and thence by Southern Pacific from Los Angeles to Portland?

A. Yes, if the rates applied.

Q. Assuming the rates so applied.

A. True.

[fol. 317] Mr. Burkett: That is all.

Exam. Wright: Exhibits 1 through 16 are received in evidence.

(Complainants' Exhibits Nos. 1 through 16, inclusive, Witness Wadsworth, were received in evidence.)

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[fol. 318] Mr. Hobbs: Is it understood, except for Mr. Roeder's appearance, the complainants rest?

Mr. Treanor: We rest our direct case, yes.

* * * * * * *

Mr. Hobbs: Yes. We call Mr. Stilling.

A. J. STILLING was duly sworn and testified as follows:

Exam. Wright: Just the one exhibit?
The Witness: That is all.
Exam. Wright: That will be No. 26.
Mr. Hobbs: Does everybody have statements now?

(Defendants' Exhibit No. 26, Witness Stilling, was marked for identification.)

Direct examination.

By Mr. Hobbs:

Q. Will you state your name and business address, Mr. Stilling?

[fol. 319] A. My name is A. J. Stilling. My business address is 1416 Dodge Street, Omaha 2, Nebraska.

Q. And by whom are you employed, under what capacity?

A. I am employed by the Union Pacific Railroad in the capacity of freight traffic manager.

Q. And how long have you been employed by the Union Pacific in traffic matters?

A. Continuously since September 1917.

Q. And just briefly, Mr. Stilling, what are your duties, what do your duties at the present time include?

A. My present duties include primarily the preparation of traffic department material for proceedings before the Interstate Commerce Commission, and also State Commission.

Q. And how long have you been engaged in that matter?

A. For the past 20 years, most of my time has been devoted to those particular duties.

Mr. Hobbs: Mr. Examiner, Mr. Stilling's testimony has been reduced in statement form which everyone has a copy. If he may be privileged to read that.

Exam. Wright: He may.

Mr. Hobbs: And in that connection, too, he is introducing an exhibit map. I wonder if that might not be marked at this time for identification.

Exam. Wright: The map bearing the docket number in the legend, "Witness A. J. Stilling," at the top, will be Exhibit [fol. 320] No. 26 for identification.

By Mr. Hobbs:

Q. Will you proceed, then, Mr. Stilling, with your statement.

A. Yes. I might say, before I start my prepared statement, this map is introduced primarily for the purpose of showing the Union Pacific line in California, Nevada, Utah, Idaho, Oregon and Washington, which is indicated with red, and the principal lines of the Southern Pacific in Oregon and California in blue, and the joint line of the Santa Fe, Western Pacific, Great Northern, between California and Portland is shown in green.

Joint rates and through routes via Portland, Oregon, have been in effect over a long period of years between points in California on the Southern Pacific and its connections, and points in Oregon, Washington and North Idaho on the Union Pacific and its connections.

The Southern Pacific, with its connecting lines, serves practically the entire State of California. In addition, Portland, Oregon, which is its northern terminus, is reached by the single line route of the Southern Pacific where northbound traffic is delivered to the Union Pacific and southbound traffic is received from the Union Pacific.

Portland is the western terminus of the Union Pacific lines from all points in Oregon, Washington and Idaho and is the only point where connection is made with the Southern [fol. 321] Pacific for interchange of northbound and southbound traffic, so we are not in competition with each other for this traffic, and there is no question as to where the traffic is to be interchanged. Interchange arrangements and train schedules of the two roads to and from Portland are geared so as to insure prompt service to the public interest.

Between the Southern California area and points in the Northwest, some of the rates are also applicable via the Union Pacific long-haul route through Salt Lake City and Pocatello. Except in a few instances, which I will discuss, it has been and continues to be my view that the joint rates and through routes with the Southern Pacific via Portland, together with the application of some of the rates between Southern California and points in Oregon, Washington and north Idaho via the Union Pacific route through Utah and Idaho, provide all the joint rates, through routes and service that is necessary in the public interest and there is no real need for additional through routes via the Western Pacific and Great Northern roads through Bieber and Portland with the Union Pacific.

Moreover, as I will show later, the two-line route of the Western Pacific and Great Northern through Bieber to Portland involves a great deal of wasteful backhauling in addition to short hauling the Union Pacific, and the route is in no way comparable to the single-line route of the Southern [fol. 322] Pacific between California and Portland.

The few instances previously mentioned where the Union Pacific has established joint rates and through routes with the Western Pacific and Great Northern via their Bieber route are those mentioned in paragraph VI of the complaint. The joint rates on livestock were ordered by the Commission in the Docket 17000, Part 9, proceeding, and class rates were established in September, 1956, as a result of the Commission's order in Docket 30416—Class Rates—Mountain Pacific Territory. An examination of our records for the year 1960 discloses no movement of livestock or class-rated traffic, so there was and is no public need for the rates and routes which the Commission ordered us to establish.

In the year 1950 or 1951, United States Pipe and Foundry Company constructed a Cast Iron Pressure Pipe Foundry at Decoto, California, a point 20 miles east and south of Oakland, California. Decoto is served by both the Western Pacific and Southern Pacific, but there is no track connection between the two carriers and the foundry is served exclusively by the Western Pacific.

In December, 1951, United States Pipe and Foundry Company filed a formal complaint (I. C. C. Docket 30964) seeking an order requiring joint rates and through routes on cast-iron pipe from Decoto, California, via Western Pacific, Bieber, California, Great Northern, Portland, Union Pacific to destina-
[fol. 323] tions on the Union Pacific in Oregon, Washington and Idaho. Shortly after the filing of the complaint, the carriers reached an agreement which led to the publication of rates satisfactory to the United States Pipe and Foundry Company effective June 21, 1952.

The formal complaint in Docket 30964 was subsequently dismissed by the Commission on petition of the complainant. The Union Pacific has enjoyed some carload movement of pipe from Portland under that rate adjustment but, because of the back-hauling involved when the destination is a station on the Union Pacific east of Portland, and the fact that we are always short-hauled via Portland as we would be under complainants' proposal, instead of receiving the cars at Bend, Oregon, where a connection exists between the Great Northern and Union Pacific, the existing arrangement is not entirely satisfactory to us.

In July, 1959, The Western Pacific Railroad Company filed a formal complaint with the Commission (I. C. C. Docket 33118) alleging violation of Sections 1(4) and 3(4) of Part I of the Interstate Commerce Act by the Union Pacific and other railroads by reason of refusal to establish joint rates and through routes via Bieber, California and Portland, Oregon on motor vehicles forwarded from Decoto and Oakland, California, to points on the Union Pacific in the States of Oregon, Washington and Idaho.

[fol. 324] At the time the complaint was filed we were informed that General Motors Corporation had decided to construct an assembly plant at Decoto, California, to be served by the Western Pacific Railroad and only the absence of joint rates and through routes via the Bieber route to Portland to destinations on the Northern Pacific, Union Pacific and their connections was delaying the final decision to proceed with the construction of the new plant.

Union Pacific management decided at that time that the circumstances presented a public need for joint rates on motor vehicles via the Bieber route, and they were established with our concurrence effective October 4, 1959. Our understanding, based on information supplied after the formal complaint was filed, was subsequently proven to be erroneous because the plant was never built at Decoto and there has been no movement under the rates that have now been in effect for about one and one-half years.

We are for a number of reasons opposed to the publication of additional joint rates via the Bieber route. Differences in the distance and op ıting conditions between the Southern Pacific route and the Western Pacific Bieber, Great Northern route from points in California to Portland have been or will be shown by another witness, as will the more difficult, expensive and generally unsatisfactory interchange arrangement between the Great Northern and Union Pacific at Port-
[fol. 325] land compared with the interchange between the Southern Pacific and Union Pacific at Portland.

In addition to the greater distance via the Bieber route than via the Southern Pacific route from points in California to Portland, there would always be a substantial backhaul involved via the Bieber route to or from points on the Union Pacific east of Portland because the Great Northern operation from Bend, Oregon to the Columbia River is over the line of railroad operated jointly by the Oregon Trunk Railway and Union Pacific Railroad.

At Oregon Trunk Junction on the south side of the Columbia River that joint line connects with the Union Pacific main line, and at Wishram, Washington on the north side of the Columbia River the joint line connects with the Spokane, Portland & Seattle Railway. From Wishram to Portland the operation is via the Spokane, Portland & Seattle Railway on the north side of the Columbia River, paralleling the line of the Union Pacific on the south side of the river. Via the Bieber route with interchange to or from the Union Pacific at Portland, there would always be out of line haul of about 200 miles to or from Union Pacific stations east of Oregon

Trunk Junction, Oregon. For example, from Oakland, California to Spokane, Washington, it is 1252 miles via Western Pacific, Bieber, California, Great Northern, Portland, Oregon, [fol. 326] Union Pacific; while it is 1048 miles via Western Pacific, Bieber, Great Northern, and 1088 miles via Southern Pacific, Portland, Union Pacific.

The present divisions received by the Union Pacific on traffic interchanged at Portland with the Southern Pacific would not be fair and reasonable to be applied to traffic interchanged at Portland via the Bieber Route because of the higher interchange costs at Portland, additional freight car per diem charges that would accrue and the additional claim hazard involved.

Q. Now, Mr. Stilling, will you please refer to the map which has been identified by Exhibit No. 26, and indicate on the map where the short hauling would occur, or why the Union Pacific would be short-hauled if these proposed routes and rates were made effective.

A. Well, on northbound traffic, that is, traffic originating in California, the complaint seeks a through route for the Union Pacific, via Portland, Oregon. There is a direct connection between the Great Northern Railway and the Union Pacific at Bend, which is the Southernmost point on the joint green and red line shown there in Oregon from our main line south.

Southbound traffic originating on the Union Pacific could be handled by the Union Pacific and there delivered to the Great Northern Railway instead of at Portland, Oregon.

[fol. 327] Q. In other words, northbound the Union Pacific, to obtain the long haul, should receive the traffic at Bend, and southbound should carry it to Bend rather than interchange at Portland?

A. It could receive the traffic at Bend northbound, and it could handle it to Bend southbound.

Q. That is what I mean.

Now, then, looking at the map again, would you indicate where the 200-mile backhaul occurs?

A. That occurs from the point where the joint red and green line on the map is shown as joining with the main east

and west line of the Union Pacific on the south side of the Columbia River.

Q. That is right opposite the designation Wishram on the map, isn't it?

A. That is right. That is the point where the joint line makes connection with the SP&S.

Q. Yes.

A. And the backhaul would occur by reason of the SP&S operation from Wishram into Portland, and then the Union Pacific from Portland back into Oregon trunk junction.

Q. And that would occur at any destination or origin point on the Union Pacific lines east of Oregon Trunk Junction?

A. That is right.

Q. Or across the river from Wishram?

A. Yes, sir.

[fol. 328] Q. Now, can you state, Mr. Stilling, what the policy of the Union Pacific has been with respect to the establishment of joint rates over the Bieber route?

You have referred to a couple or three instances. What is the policy of the Union Pacific with regard to that?

A. Well, we are generally opposed to the publication of joint rates over the Bieber route for reasons that I have stated, but we are ready and willing at all times, as my testimony indicates, to give very serious consideration to the publication of joint rates where there is proven need for them in the public interest.

Q. And is it your understanding that that policy of the Union Pacific will continue?

A. Yes, sir.

Mr. Hobbs: You may cross examine.

Cross examination.

By Mr. Treanor:

Q. Mr. Stilling, is it correct that your jurisdiction and certainly your knowledge is not confined to the Union Pacific situation at Portland, Oregon? Is that correct, sir?

A. (No response.)

Q. What I have in mind is that you know, or do you know of any points of interchange between your railroad and more than one other carrier?

A. Well, I am not sure that your question is clear, Mr. Treanor.

[fol. 329] Q. What I am getting at is, at Portland you connect with, among others, the Southern Pacific and the Great Northern. Now, at other points in your system, you make connection or interchanges with more than one carrier, do you not, sir?

A. We serve a great many common points on our entire railroad, but we may—but we make connection with more than one railroad, yes.

Q. And at every one of those points, do you have identical interchange arrangements with each carrier with which you interchange at that point?

A. They would not be precisely.

Q. Isn't it a fact, sir, at many points there are differences of a material degree?

A. I wouldn't be able to answer that.

Q. At how many points do you join in rates? And I am thinking of a situation that we have just covered where the Union Pacific connects with more than one carrier under different conditions at the same point.

At how many of those points do you give through rates to one of your connections and deny them to another?

A. I couldn't answer that question.

Q. There are not very many, are there, Mr. Stilling, so far as you know?

A. No, I guess not. There would not be very many, no, where the conditions are identical.

[fol. 330] Q. Well, let us say where they are not identical and where they are dissimilar.

A. There would still not be very many.

Q. Now, on this backhauling situation, I just want to make sure it is clear.

This is backhauled from Portland back to Wishram, but you didn't get the in-haul, did you?

A. Not under your complaint, we would not get the in-haul, no, to Portland.

Q. It is not a situation then where you would have to haul it in and then haul it back out again another 200 miles?

A. No, sir.

Q. So that, as far as you are concerned, on this so-called backhaul—when I say "you" I mean the Union Pacific—whether you take it—without regard at this time to the interchange, disregarding the interchange for purposes of this question—your operation, whether you take the trains or the cars from the Southern Pacific at Portland, and move them up into this eastern territory, would be no different than if you took them from the Great Northern and moved them in that connection?

A. The Union Pacific's linehaul operation would be no different.

Q. Yes, sir, that is what I meant, the line haul.

The differences in the operating conditions between the Southern Pacific route and the Western Pacific-Great Northern route that you have referred to, except for what you have [fol. 331] testified to with regard to the interchange connections or the interchange situation, doesn't affect you, does it, sir? I mean by "you," I mean the Union Pacific.

A. No, sir.

Q. The testimony you have given with regard to the unfortunate experience of the Western Pacific with the General Motors plant, does your information go far enough to indicate who got that plant?

A. No, sir.

Q. If the divisions that have been offered to you on the same basis as what you are getting from the Southern Pacific were enlarged enough to make up for these alleged additional costs on the interchange, would that make a difference in the attitude of the Union Pacific?

A. It might.

Q. Now, we come to the question of the detail on these, and I quote, more difficult expenses and generally unsatisfactory interchange arrangements.

You have indicated that there would probably be another witness on this.

A. There will.

Mr. Hobbs: There will, Walter. We are going into that in detail.

By Mr. Treanor:

Q. The Union Pacific is a substantial stockholder in the Western Pacific, is it not, Mr. Stilling, to your knowledge? [fol. 332] A. I understand from press reporters that we are.

Q. Do you hold that for investment purposes, do you know?

A. I wouldn't know.

Q. If it were held for investment purposes, would you want to improve your investment or damage it?

Mr. Hobbs: I object to that, Mr. Examiner. It has nothing to do with this case.

Exam. Wright: I will sustain the objection.

By Mr. Treanor:

Q. With regard to the interchange at Bend, you are not presently under the setup you have with your rates today getting any traffic from us at Bend, are you?

A. Not to my knowledge.

Q. So that if the traffic generally should increase via our route, and you were to get it at Portland, you would be no worse off than you are today, would you, Mr. Stilling?

A. I think I missed something.

The Witness: Would you read it, Mr. Reporter?

Exam. Wright: Would the reporter read the question?

(Question read.)

The Witness: No.

Mr. Treanor: That completes my examination. Thank you.

Exam. Wright: Any further cross?

Mr. Tjosseni: Yes, I would like to ask a few questions, please.

[fol. 333] By Mr. Tjosseni:

Q. Mr. Stilling, I am interested in your testimony at the bottom of page 3 concerning the connection that exists between the Great Northern and Union Pacific at Bend.

Is there any traffic interchange between the Great Northern and Union Pacific at Bend, to your knowledge?

A. Not to my knowledge, no, at the present time.

Q. Do you know as a matter of fact that there is a connection between the Union Pacific and the Great Northern at Bend, or is that connection with the Union Pacific with the Oregon Trunk?

A. Well, it is my understanding that there is a connection there between the Union Pacific and the Great Northern.

Q. There is actually a physical connection?

A. That is my understanding, yes, sir.

Mr. Tjosseni: I have nothing further.

Exam. Wright: Redirect?

Mr. Hobbs: Just one question.

Redirect examination.

By Mr. Hobbs:

Q. There is one difference, isn't there, Mr. Stilling, in answer to Mr. Treanor's question about the fact that we are not injured by interchanging at Portland, or wouldn't be injured by interchange at Portland with the Great Northern over what we have today, but we are not being shorthauled today, are we?

[fol. 334] A. On whatever traffic moving via the Bieber Route on the Union Pacific we are being short-hauled.

Q. Yes, on those few instances where we have rates in effect, but by and large we are not short-hauled today except for that.

A. That is right, sir.

Q. We are not short-hauled when we interchange with the Southern Pacific at Portland.

A. No, sir.

Mr. Hobbs: That is all.

Mr. Treanor: That is all I have.

OFFER IN EVIDENCE

Mr. Hobbs: We offer Exhibit No. 26, Mr. Examiner.

Exam. Wright: Any objections?

Mr. Treanor: No, sir.

Exam. Wright: Exhibit No. 26 is received in evidence.

(Defendants' Exhibit No. 26, witness Stilling, was received in evidence.)

* * * * * * *

Exam. Wright: You are excused.

(Witness excused.)

Mr. Higgins: Just go on around and he will swear you in.

R. B. HARDIN was duly sworn and testified as follows:

Exam. Wright: Be seated.

[fol. 335] Mr. Higgins: If the Examiner, please, the next witness is Mr. R. B. Hardin. He has a prepared statement and a one-sheet map exhibit, and I would like to have the map exhibit marked for identification at this time.

Exam. Wright: That will be No. 27 for identification.

(Defendants' Exhibit No. 27, Witness Hardin, was marked for identification.)

Direct examination.

By Mr. Higgins:

Q. Mr. Hardin, having been sworn, will you please proceed to read your statement.

A. My name is R. B. Hardin. I am Terminal Superintendent of the Union Pacific Railroad Company at Albina-Port-

land, Oregon on the Oregon Division. My office is located at 2525 North Larrabee Avenue, Portland, Oregon. I have been employed in this capacity at Albina-Portland, Oregon since September 1, 1960 and have previously been employed in various capacities in the Operating Department of the Union Pacific Railroad Company since 1936. My duties include the supervision of all phases of yard operation including the general supervision of operating functions and personnel. My duties extend to all such operations throughout the Albina-Portland area.

I am generally familiar with the issues in this proceeding and with the request of the Western Pacific Railroad Company for a through route connecting with the Great Northern Railway at Bieber, California and the Union Pacific Railroad [fol. 336] Company at Portland, Oregon. In preparing my testimony I have made a recent investigation of the operations involved in the interchange of traffic between the Union Pacific Railroad Company and Southern Pacific Company at Portland, and also the conditions of operation that would take place in connection with an interchange at Portland between the Great Northern Railway Company and the Union Pacific Railroad Company involving traffic moved via Bieber. For purposes of illustration, I have had prepared a map of the rail facilities at Portland, Oregon and Vancouver, Washington involved in these interchange operations. This map has been marked for identification as Exhibit No. 27.

All traffic interchanged at Portland between the Union Pacific Railroad Company and connecting lines, except the Southern Pacific Company, is interchanged at the Northern Pacific Terminal Company Depot Yard. This is shown on the map, Exhibit No. 27, by a letter E. Interchange between the Union Pacific Railroad Company and the Southern Pacific Company is accomplished in the Union Pacific Railroad Company's Albina yard. This is shown on Exhibit 27 by a letter B.

I would now like to explain the manner in which traffic is interchanged between the Union Pacific and Southern Pacific at Portland. Traffic from California points billed via the Southern Pacific Company for interchange to the Union Pacific Railroad Company arrives in Portland in the Southern

[fol. 337] Pacific Company's Brooklyn-Portland yard. Brooklyn yard is designated by a letter A. While en route, this traffic is blocked in such a manner that when the train arrives in the Brooklyn-Portland yard, cars intended for destinations on the Union Pacific Railroad Company and its connections are removed from the train and handled in a transfer movement from the Brooklyn-Portland yard to the Union Pacific's Albina-Portland yard.

When I refer to traffic, or cars, being "blocked" in a train, I mean that all cars for interchange to the Union Pacific, for instance, are grouped together to facilitate transfer to the Union Pacific's Albina yard.

These transfers, as well as those in the opposite direction, are handled by Southern Pacific Company engines and crews between the Brooklyn and Albina yards. After delivery of a transfer at Albina, the Southern Pacific crew returns to Brooklyn with a transfer from the Union Pacific. Cost of making the transfers is computed on a minute basis for the time the Southern Pacific Company engines and crews are on the Union Pacific Railroad Company trackage at the rate of $22.60 per hour. Using February, 1961, as an example, the Southern Pacific Company made 113 round-trip movements between Southern Pacific Company Brooklyn yard and Union Pacific Railroad Company Albina yard and handled a total of 3857 cars from Brooklyn to Albina and 4218 cars from Albina to Brooklyn for a total of 8075 cars. Eliminating [fol. 338] light movements, that is when an engine moves without handling any cars, the transfers from Brooklyn to Albina averaged 38 cars, and the transfers from Albina to Brooklyn averaged 42 cars. As many as 86 cars were handled in a transfer to Albina and 74 cars have been handled in a transfer to Brooklyn.

Southern Pacific Company crews used 167 hours and 30 minutes time on Union Pacific Railroad Company trackage at a cost to the Union Pacific Railroad Company of $3,785.50. This broken down on a car basis amounts to 46.88 cents per car.

Traffic arriving in Brooklyn Yard on Southern Pacific Company manifest trains to be interchanged to the Union Pacific

Railroad Company is delivered to the Union Pacific at Albina Yard in time to make its outbound connections. It is a distance of four and one-half miles from Brooklyn Yard to the point where Southern Pacific Company transfers are yarded in the Albina Yard. Average time consumed by Southern Pacific Company in making this transfer is 45 minutes.

Waybills for the traffic are handled by the Southern Pacific Company switch crews making delivery of the interchange or by messenger service between Brooklyn Yard Office and Albina Yard Office. All waybills are delivered to the Albina Yard Office where waybills for through traffic move with cars on respective trains and waybills for local industries are dispatched to the Albina Freight Office for their handling.

I would like to describe the Albina Yard and the way [fol. 339] traffic is handled there. The classification yard in Albina Yard is a flat yard with switching leads on both ends. There are 40 tracks with a total capacity of 2975 cars. There are five tracks, capable of holding 146 cars each or a total of 730 cars, which are used for the yarding and making up of through trains. Exclusive of the train yard, this classification yard has an operating capacity of approximately 1800 cars. Although all tracks exclusive of the train yard are used for classification, there are no assigned tracks for yarding transfers and all tracks are used for the purpose from time to time depending on operating conditions. When a transfer is yarded, Car Department employees are advised and an inspection is made of the cars and air bled off in order that they may be switched.

Using as an example, a transfer consisting of 38 cars from Southern Pacific Brooklyn yard, it would take 45 minutes for the Car Department to complete their inspection and bleed off the cars. All cars are identified by card system for the purpose of switching the cars in the Albina area. These cards, showing destination, are applied on cars upon arrival from information contained on waybills by Weighmaster-Yard Clerks. Ordinarily the cars are

carded by the time the Car Department has completed their inspection. It would take approximately 40 minutes to switch a transfer consisting of 38 cars. It should be noted that from the time a transfer is yarded and in the event [fol. 340] it consisted of 38 cars, elapsed time would be one hour and 25 minutes before the cars from the transfer would be ready to be entrained in an outbound connection.

At this time I would like to explain the handling of traffic in the Portland area between the Union Pacific and Great Northern when moving by the Bieber route. Traffic from California points via the Bieber route to Portland thence for movement by the Union Pacific Railroad Company beyond Portland would be handled by the Great Northern Railway Company to Bend, Oregon. From Bend the traffic would be moved over Oregon Trunk trackage to Wishram, Washington, which is located 106 miles east of Portland, and thence on Spokane, Portland and Seattle Railway Company track along the north bank of the Columbia River to Vancouver, Washington by SP&S Company crews. Vancouver yard is shown on Exhibit 27 by letter C.

When trains arrive from the Bieber Route through Bend, they are not blocked and it is necessary to yard the trains at Vancouver for classification. After classification traffic for delivery to the Northern Pacific Terminal Company, including traffic for Union Pacific, is handled in a transfer by SP&S engines and crews to the Northern Pacific Terminal Company Lake Yard. It is eight miles from Vancouver Yard across the Columbia River bridge and the Willamette River bridge to the Lake Yard which is identified on Exhibit 27 by letter D.

At the Northern Pacific Terminal Company's Lake Yard [fol. 341] the traffic is switched and the portion moving to the Union Pacific Railroad Company is handled from the Lake Yard to the interchange track in Northern Pacific Terminal Company's Depot yard by the Northern Pacific Terminal Company's switch engines, and crews. Depot yard is shown on Exhibit 27 by letter E.

Before being moved to the Depot yard, cars yarded in Lake Yard receive a Class A inspection by NPT mechanical forces and switching is done by NPT crews by the use of switch lists. In the case of cars for the Union Pacific Railroad Company, they are classified to a track and assembled for transfer.

The waybills for Great Northern cars yarded in the Lake Yard are taken to the SP&S Freight and Yard Office at Hoyt Street by the switch crew handling the transfer. After the waybills are worked, the switching instructions are telephoned to the Northern Pacific Terminal Company Yard Office and confirmed by a switch list which is delivered by messenger.

All Union Pacific Railroad Company traffic on hand at the Lake Yard is transferred to the Depot Yard three times daily. After the NPT switch engine is attached to the transfer, it would take 35 to 40 minutes for the Car Department to inspect and make the prescribed interchange air test. To perform this inspection and air test, blue flags are placed, one on the engine and one on the rear car of the transfer, and after the test is completed, the blue flags are removed. The transfer then proceeds to the Depot Yard, a [fol. 342] distance of two miles, where it is made available for interchange to the Union Pacific.

The Northern Pacific Terminal Company is a switching railroad owned jointly by the Union Pacific Railroad Company, Northern Pacific Railway Company and Southern Pacific Company, except that portion of the Northern Pacific Terminal Company's property known as Lake Yard in which the Great Northern Railway Company has a 25 per cent interest, and the Northern Pacific Terminal Company has a 75 per cent interest. Northern Pacific Terminal Company is managed and operated by its own staff of officers. Its costs of operation are pro-rated between the Railroad Companies involved on a per car cost basis, and this per car cost for the year 1960 for cars handled by the Terminal Company for the Union Pacific Railroad Company was $3.25 per loaded or empty freight car.

At the Depot Yard traffic from the Great Northern is interchanged to the Union Pacific Railroad Company and handled by Union Pacific Railroad Company engines and crews from the Depot Yard to Union Pacific Railroad Company's Albina Yard where cars are switched and entrained in the various connections for points north and east of Portland. Reverse movement would apply to southbound traffic via the Bieber route. As I have previously indicated, Albina Yard is identified by a letter B on map Exhibit 27.

The transfers are handled by Union Pacific Railroad [fol. 343] Company crews and engines from the Depot Yard to Albina Yard three times in a 24-hour period. These transfers are ordinarily handled from the Depot Yard to Albina at 4:00 a.m., 4:30 p.m. and 7:30 p.m. For example, in the month of February, 1961, there was a total of 92 transfers from the Depot Yard to the Union Pacific Railroad Company Albina Yard for a total of 1900 cars, an average of 20.65 cars per transfer. During this same month, the Union Pacific Railroad Company delivered 82 transfers to the Depot Yard for a total of 2093 cars, averaging 25.5 cars per transfer.

After the transfer is made available at the Northern Pacific Terminal Company Depot Yard and the Union Pacific switch engine is attached to the transfer, it is necessary that Northern Pacific Terminal Company carmen make the prescribed air test. This consists of placing blue flags on both ends of the transfer and after the inspection and air test are completed, the blue flags are removed. This air test on 21 cars will consume approximately 20 minutes. The reason that the air test in the Depot Yard can be performed quicker than at Lake Yard is because ordinarily the air hoses are all coupled and there is air in the brake cylinders.

After the air test is completed, Union Pacific Railroad Company switch crew handling the transfer will proceed to Albina Yard and will travel a distance of approximately two and one-half miles to a point where the cars will be [fol. 344] yarded in the Albina classification yard.

Switch lists for these transfers are handled via messenger from the Northern Pacific Terminal Company to Albina

Yard Office. Waybills and/or bills of lading are handled by messenger from various designated points to the Albina Yard Office.

Northern Pacific Terminal Company Depot Yard and the Union Pacific Railroad Company trackage is separated by the Willamette River, spanned by the Steel Bridge, located just east of Depot Yard. The bridge is jointly owned by the Union Pacific Railroad Company and the Southern Pacific Company, and used by those railroads and the Spokane, Portland & Seattle Railway Company. Maintenance and operation of the bridge is supervised by the Union Pacific Railroad Company for the owning companies. The total expense of maintenance and operation of the bridge is divided among the Railroad Companies making use thereof on the basis of number of cars for each company handled over the bridge. For the year 1960 the average cost per car handled over this facility was 44 cents.

Once the transfer is yarded in the Albina Yard, it would be handled in the same manner as a transfer from the Southern Pacific, or any other line. My previous description of the Albina Yard and the handling of a transfer from the Southern Pacific would be equally applicable to the handling of a Great Northern transfer such as I have just described.

[fol. 345] While my testimony has primarily covered transfer movements from the Southern Pacific and the Great Northern to the Union Pacific at Portland, the reverse movement of traffic would be substantially the same.

At this time, I would like to point out the main differences in handling an interchange of traffic between the Southern Pacific and the Union Pacific at Portland on the one hand and an interchange of traffic between the Great Northern and Union Pacific at Portland when via Bieber on the other hand.

1. An interchange between the Southern Pacific and the Union Pacific would receive two mechanical inspections, switching for classification in one yard, and one transfer movement.

An interchange between the Great Northern and Union Pacific would receive six mechanical inspections, switching for classification in three yards and three transfer movements.

2. An interchange between the Southern Pacific and Union Pacific would cover a distance of 4½ miles between Brooklyn Yard and Albina Yard.

   An interchange between the Great Northern and the Union Pacific via Northern Pacific Terminal Company's Yard would cover a distance of 12½ miles from Vancouver Yard to Albina Yard.

3. The average total elapsed time in an interchange be- [fol. 346] tween the Southern Pacific and the Union Pacific from the time the traffic arrived at Brooklyn Yard until delivered in Albina Yard is three hours 20 minutes.

   The average total elapsed time in an interchange between the Great Northern and the Union Pacific from the time traffic arrived at the Vancouver Yard until delivered in Albina Yard is 13 hours 20 minutes.

4. Traffic interchanged between the Southern Pacific Company and the Union Pacific in transfers costs the Union Pacific 46.88 cents per car.

   Traffic interchanged between the Great Northern and the Union Pacific when via Bieber costs the Union Pacific $3.25 per car for handling by Northern Pacific Terminal Company and 44 cents per car for handling over the Steel Bridge for a total of $3.69 per car. This does not include the cost of Union Pacific engines and crews handling the transfers between Depot and Albina Yards.

5. An interchange between the Southern Pacific and the Union Pacific averages 38 cars in a transfer to Albina Yard and 42 cars in a transfer to Brooklyn Yard with as many as 86 cars being handled to Albina and as

many as 74 cars being handled to Brooklyn in one transfer.

[fol. 347] A transfer from the Depot Yard to Albina Yard Averages 20.6 cars in a transfer and when handled from Albina Yard to Depot Yard averages 25.5 cars per transfer. The number of cars in these transfers range from 1 to 56.

I mention this comparison because it is not a satisfactory operation to handle more than 40 cars in a transfer from the Depot Yard to the Albina Yard because of a grade of .75 per cent for a distance of approximately 500 feet when going on to the Steel Bridge and also because of an S-Curve of 16 degrees and 15 degrees respectively after crossing the Steel Bridge. With more than 40 cars in a transfer it is not uncommon for the Union Pacific switch engines to stall, making it necessary to dispatch additional power or to cut the transfer and handle it in two separate movements from the Steel Bridge to Albina Yard.

Since it is apparent that a substantial back haul would be incurred in the case of traffic moved via the Bieber route west from Oregon Trunk Junction on the SP&S along the north bank of the Columbia River to Portland for interchange with the Union Pacific, and then east along the south bank of the Columbia River past Oregon Trunk Junction on the Union Pacific, I have made an investigation to determine the additional time and distance that would be involved.

Mr. Treanor: Just at this point, I don't know whether I [fol. 348] want to make an objection or not. I would like to ask for clarification whether this is included in his territory.

Mr. Hobbs: It is.

Mr. Higgins: It has been noted.

Mr. Treanor: All right.

By Mr. Higgins:

Q. Go ahead, Mr. Hardin.

A. For example, traffic handled direct to Spokane by the Great Northern Railway Company via Bieber is scheduled to depart from Bend on train GN-SWG at 5:30 a.m. and on the GN-Expediter 11:05 a.m., departing Los Angeles Mondays, Tuesdays and Fridays. According to Spokane, Portland and Seattle Railway Company timetable No. 131, running time from Bend to Wishram, Washington is four hours and 55 minutes. Spokane, Portland and Seattle Railway Company operates Second 276 from Vancouver to connect at Wishram with these trains and traffic from both of these trains is scheduled to arrive Spokane 10:00 a.m. the following morning. Elapsed time from Wishram to Spokane for GN-SWG traffic is 23 hours 35 minutes. Elapsed time for GN-Exp is 18 hours.

In the event the same traffic were routed via the Bieber Route-Union Pacific-Portland on the same schedules, GN-SWG would be due to arrive Wishram 12:25 a.m., and in case of the GN-Exp 4:00 p.m. According to Spokane, Portland and Seattle Railway Company timetable No. 131, running time between Wishram and Vancouver is two hours ten minutes. The average elapsed time from arrival Van- [fol. 349] couver Yard to arrival Albina Yard is 13 hours 20 minutes, which would schedule the traffic to arrive Albina off the GN-SWG at 1:55 a.m. the following morning and the GN-Exp traffic would arrive 7:30 a.m. the following morning. Traffic from both of these connections would depart from Albina on Union Pacific train No. 198 at 11:00 p.m. same day and arrive in Spokane 11:00 p.m. the following night which would amount to elapsed time of, in the case of traffic on the GN-SWG, 60 hours 35 minutes, and in the case of GN-Exp, 55 hours.

The additional mileage involved in a movement from Wishram west to Portland and then back to Oregon Trunk Junction, across the Columbia River from Wishram, is 203.7 miles in excess of the direct route.

Again using the destination of Spokane as an example, I would like to describe the time and mileage involved when traffic is delivered to the Union Pacific at Portland Albina Yard by the Southern Pacific. All Southern Pacific Company schedules are such that traffic arriving at Brooklyn Yard on any given day could make the Union Pacific No. 198 train scheduled to depart 11:00 p.m. same day, arriving Spokane the following day at 11:00 p.m. With the averaged elapsed time of three hours and 20 minutes from the arrival of a car in Brooklyn Yard until arrival in Albina Yard, plus the average time of one hour and 25 minutes before a car is ready to be entrained in outbound connection, [fol. 350] the elapsed time from arrival in Brooklyn Yard to arrival in Spokane would be approximately 28 hours 45 minutes.

From Albina Yard to Oregon Trunk Junction via Union Pacific is 95.1 miles. If the traffic had been routed via Bieber, and handled by the SP&S to Vancouver and then interchanged to the Union Pacific at Albina Yard for movement by the Union Pacific to Spokane, it would move an additional total of 205.2 miles in reaching Oregon Trunk Junction on the Union Pacific on the route to Spokane.

Q. Mr. Hardin, in your statement you referred to certain specific information such as number of cars handled in transfers. You recited various distances both within the Portland Terminal area and outside of it.

You also mentioned schedules and various elapsed time.

Now, sir, did the information to which you have just referred, was that developed personally by you?

A. Yes, sir.

Q. And with respect to the operations to which you have referred, you have made a personal inspection and investigation yourself?

A. Yes, sir.

Mr. Higgins: Mr. Examiner, that concludes the direct examination of Mr. Hardin. I tender him now for cross-examination, and I would also like to offer at this time Exhibit No. 27.

[fol. 351] Exam. Wright: I will withhold ruling on the offer until the conclusion of the examination of the witness, and we will take a short recess.

(Short recess.)

Exam. Wright: Come to order, please.

Cross examination.

By Mr. Treanor:

Q. Mr. Hardin, I would like to direct your attention to your statement at the top of page 2 where you refer to the fact that all traffic interchanged at Portland between the Union Pacific and connecting lines, except the Southern Pacific, is interchanged at the Terminal Company Depot Yard.

A. Yes, sir.

Q. Now, could you tell us who those other railroads are?

A. Well, the Northern Pacific and the Great Northern.

Q. How about the SP&S?

A. Yes, the SP&S.

Q. Any others that might come to your mind?

A. No.

Q. That would be the total?

A. Yes.

Q. At the bottom of that same page, page 2, how often is that transfer made between Brooklyn and Albina Yard?

A. Brooklyn and Albina Yard?

Q. Yes, sir.

[fol. 352] A. The transfers vary as to the traffic. There are not any scheduled transfers. I mean time schedules on the transfers. It depends on the business, the amount of traffic.

Q. Are you in a position based on the work you did here to tell us has there been established any average?

A. Yes, I can tell you they will average between four and five transfers in a 24-hour period, between four and five transfers.

Q. Now, is that four and five in each direction, or a total of four and five?

A. In each direction. When they deliver traffic to us, they ordinarily take traffic back, so that would be in both directions, yes.

Q. If I understand you correctly, that would be a total of eight to ten movements?

A. It would be, some days for example the average would be eight, four over and four back. The next day there might be ten, five over and five back.

Q. The cost of making the transfers you say is computed on a minute basis?

A. Yes, sir.

Q. Now, do you pay that in both directions?

A. Yes, we pay the time that the engine is on the Union Pacific trackage, whether he is delivering to us or whether he is taking cars from us, yes.

[fol. 353] Q. Are these the total costs that are incurred in making a transfer or a switch between your line and the Southern Pacific?

A. In that particular time that I referred to, yes, which was February 1961, yes, sir.

Q. In other words, I am not talking, of course, so you understand, about what you pay the Southern Pacific for that engine. I am talking about costs incurred by the Union Pacific, track maintenance or anything of that nature. That is not included in there, is it?

A. No.

Q. Your attention is directed to page 5 of your statement, and the paragraph at the middle of the page. You say you would like to explain the handling of the traffic in the Portland area between the Union Pacific and the Great Northern when moving via the Bieber route.

Is there any difference if the traffic via the Great Northern doesn't travel via the Bieber route?

A. No, so far as the transfers are concerned, no.

Q. So that in all of your transfers between the Union Pacific and the Great Northern this situation would apply?

A. Yes, sir.

Q. You have testified, also, on that same page that when trains arrive from the Bieber Route through Bend, they are not blocked. Now, is this a fact, sir—were you present [fol. 354] in the hearing room when Witness Allen testified?

A. Yes, sir.

Q. And is he incorrect in that respect?

A. From my observations, yes.

Q. Well, let us go a little further through your observation.

A. All right.

Q. When the trains arrive and you notice they are not blocked, you say, are they under your jurisdiction at that time?

A. No.

Q. Well, then, what is the extent of your observation as to this failure to block the cars?

A. I have had occasion to be in the Vancouver Yard numerous times since I have been in my capacity as terminal superintendent. The latest was a week ago last Saturday, and I have had occasion to study, look at the consist of the trains coming in via the Beiber Route, and I have noticed that they are not blocked and I have also seen the trains yarded in the Vancouver Yard and not being cut, a portion of the train left out on the outside track and it was from my own observation that I made this testimony.

Q. And are you familiar with the fact of whether or not an SP&S switch engine was standing there ready when these trains arrived for the separation of the Portland traffic away from the rest of the train?

A. Except that I have made a study of the time from the [fol. 355] arrival of the Vancouver to the arrival of the Northern Pacific Terminal Company Yard, and it is my observation that the cars had to be classified.

In other words, there would be some cars on the rear of the train that would have to come out, and then there would be other cars up in the train that would have to be switched out.

However, I will admit that from my observation they

ordinarily went against these trains very promptly as they could after inspection was made of them and so forth.

Q. I take it what you are talking about here is something as you have testified to would be a problem for someone other than yourself?

A. I don't follow you.

Q. Well, you say this failure to have the cars blocked, what does that do to you, your client, your employer?

A. Well, it is no problem to us except that we get the cars later. There is a possibility of us getting them later, I will say that.

Q. You haven't been getting too many, have you?

A. No, not as far as we would like.

Q. At the beginning the blocking is the responsibility of the delivering carrier?

A. Yes.

Q. And they can take care of that?

A. I beg your pardon?

[fol. 356] Q. And they can take care of the problems in that regard?

Mr. Higgins: If the Examiner please, I object to that as a statement from counsel, they can take care of it. We don't know if they can or not.

Mr. Treanor: In your opinion, can they take care of it?

Exam. Wright: I will overrule the objection.

A. I am not familiar with the operation; I am not familiar with whether they could or not.

By Mr. Treanor:

Q. Well, you have testified here about the inherent difficulties or problems, and I want to be sure that this is not a problem for you.

Mr. Higgins: If the Examiner please, I object. The witness did not testify that these were inherent difficulties. He testified from his observations of what has happened there, and he has already indicated he does not intend to speculate as to what might happen in the future.

Exam. Wright: I will sustain that objection.

I think he has already answered the question.

Mr. Treanor: I think he has, too, so I am not going to press it.

(Laughter.)

By Mr. Treanor:

Q. I would also like to know—you say all Union Pacific—on page 6—all Union Pacific Railroad Company traffic handled at the Lake Yard is transferred to the Depot Yard three times daily. Where is that transferred from?

[fol. 357] A. From?

Q. Yes.

A. Well, the cars are assembled at Guilds Lake Yard, and they come from various sources.

Q. Well, what are those various sources?

A. From connections, from industries located on the Northern Pacific Terminal Company, from connections into the Lake Yard.

Q. Now, aside from the industry traffic moving in, what connections are you specifically talking about?

A. Traffic from Vancouver Yard, SP&S, and Northern Pacific and Great Northern.

Q. Now, sir, I would like to go to page 7. The Northern Pacific Terminal Company—you may have made this clear but I would like to just inquire—do you have a function with that company?

A. Do I have a function?

Q. Yes.

A. So far as having jurisdiction you mean in that Guilds Lake Yard or—

Q. Well, actually, it appears to me that you have testified at quite some length about the activities and costs, et cetera—

A. Yes.

Q. —of Northern Pacific Terminal Company. Yet in giving your qualifications you have said that you are terminal

[fol. 358] superintendent of the Union Pacific Railroad Company which, of course, is apparent.

I would like to know just what your connection is with the Northern Pacific Terminal Company.

Mr. Higgins: Well, Mr. Examiner, I will have to at least comment on the question and see if it is phrased properly. I don't think the witness has testified as to the cost of the Northern Pacific Terminal Company except to the extent both costs are billed against the Union Pacific.

Mr. Treanor: Well, Mr. Examiner, I submit that I have to be able to get to the guts of these costs to the Union Pacific and if this man is not prepared to discuss that subject with me then of course I can't proceed and I don't think his testimony would be proper.

So, therefore, I was trying to lead into an examination of this man on those figures.

Exam. Wright: As I understand the question, you are asking him whether or not he holds any official capacity with the Terminal Company.

Mr. Higgins: I believe the word was "function."

Now, if he would explain what he means by function, I wouldn't object to it.

By Mr. Treanor:

Q. What do you do for them?

Exam. Wright: If anything.

A. I do not work for the Terminal Company.

[fol. 359] Mr. Higgins: All right, you have answered it.

By Mr. Treanor:

Q. I know that Mr. Higgins is anxious for me to ask you for your underlying documents on these costs, so I will now ask you for them.

A. On the cost that I have reference to, the $3.25?

Q. Yes, sir.

Mr. Higgins: To what do you have reference, Mr. Treanor?

Mr. Treanor: I would like the underlying documents which show that it cost the Union Pacific the sum of $3.25 for loaded or empty freight cars, and I would also like to go into in some detail the manner in which that figure was arrived at.

I want to know what elements went into that. I want to know what you are paying for for that $3.25.

Mr. Higgins: The witness does not have the underlying documents to the extent that you have in mind I am sure, but if you will ask him how he arrived at that figure, how he knows about it, I think he can answer it quite capably.

By Mr. Treanor:

Q. How did you arrive at it?

A. I was advised by a letter addressed to the general manager indicating that the cost, in 1960, that our average cost was $3.25 per car count.

Q. You got a letter from the Union Pacific's general manager or—

A. No, the Northern Pacific Terminal Company.

Q. In other words, as I understand it, what you have to [fol. 360] give me is a bill that you have paid?

A. No, it isn't exactly a bill.

Q. Well, it is a statement of a bill?

A. That is right.

Q. But you don't know whether that was even—you don't know how that is composed, do you?

A. (No response.)

Q. Or how it was compiled?

A. No.

Q. So that if I were to inquire as to whether included in that $3.25 for loaded or empty freight car is an investment in equipment which you have, an investment in land, an investment in salaries a portion of taxes maybe even a part of Mr. Hobbs' salary—

Mr. Hobbs: I don't work for the Terminal Company either.

By Mr. Treanor:

Q. You couldn't tell me any of that, could you?

A. I don't know the mechanics of computing the costs, if that is what you mean, no.

Q. Well, let me ask you this, sir, then. This is a per car cost, and you already have your investment in the terminal. If you get a lot more cars through that yard your per car cost might go way down so far as you know.

Mr. Higgins: If the Examiner please, I object to that. The witness has testified he does not know the components [fol. 361] of the cost.

Exam. Wright: I will let him ask that on cross-examination. Overruled.

Mr. Higgins: Sir?

Exam. Wright: Overruled.

The Witness: Will you read the question pending?

Mr. Higgins: The reporter will read it, sir.

Exam. Wright: The reporter will read the question.

(Question read.)

A. I don't know for sure whether it would be or wouldn't be.

By Mr. Treanor:

Q. I don't suppose you could tell me whether your per car cost was caused by interchange with the Great Northern, or with some other carrier, maybe the Northern Pacific, could you?

A. If the Terminal Company handles the car for us, it costs $3.25.

Q. Yes.

A. That is right.

Q. But is each car that you may get from the Great Northern if these rates go into effect going to cost you an

additional $3.26 so far as you know or may it cost you an additional penny?

A. I don't know.

Q. Will you direct your attention, please, to page 8. I read this hurriedly, and I would like to just take a second [fol. 362] to reread it before I ask the question. I may be guilty of just misreading.

Now, you say, sir, "For example in the month of February 1961 there were a total of 92 transfers from the Depot Yard to the Union Pacific"—excuse me, I had misread it.

The statement you make, sir, on page 10, in subparagraph Arabic numeral 2 there, you give the distance of 12½ miles from Vancouver Yard to Albina Yard.

I am a little confused as to why you put that figure in there. Isn't the interchange made at Portland rather than Vancouver?

Mr. Higgins: Pardon me, counsel, where are you? I missed the—

Mr. Treanor: Page 10, Bill. No. 2.

Mr. Higgins: All right.

A. At that particular place I am comparing the distance between the Brooklyn Yard and the Albina Yard and the difference between Vancouver and the Albina Yard.

Q. But actually the interchange is made in Portland today, not at Vancouver.

A. Yes, but we have to take them to Albina from Portland to entrain them, so they move the extra two and a half miles.

Q. Well, what I was asking you about, though, is you have given the distance of 12½ miles from Vancouver to Albina?

A. Yes.

[fol. 363] Q. I am not sure that I follow your answer there. I don't mean to press you on it, but—

A. Well, the distance between Brooklyn Yard and the Albina Yard where the cars could be entrained is four and a half miles.

Q. Yes.

A. The distance from Vancouver Yard to Albina Yard where the cars could be entrained is 12½ miles.

Q. Oh, I see. You are looking ahead maybe to an improvement in your situation?

A. No, not necessarily. I am just relating the distances between these points.

Q. Well, what is the significance of showing the situation at Vancouver unless there is a possibility of improving this interchange by making it at Vancouver?

Mr. Higgins: Well, if the Examiner please, that is argumentative. We are showing what the situation is between terminals after line haul movements because of the request of the complainants here.

We are simply comparing what the situation would be.

Exam. Wright: I will sustain the objection.

By Mr. Treanor:

Q. Let me ask it another way, and I am not trying to circumvent an objection when I ask it.

Based on your experience, and you are obviously well experienced, cannot improvements be made in the interchange situation in Portland between the Great Northern [fol. 364] and your railroad?

A. Oh, I haven't given any great thought right at this time. I wouldn't say that you couldn't.

Q. Have you worked in other terminal areas?

A. Yes, sir.

Q. Have you ever seen improvements made?

A. I beg your pardon?

Q. Have you ever seen improvements made in terminal areas?

A. Oh, yes.

Q. It is done all the time, isn't it, sir?

A. It is our intention.

Q. Now, sir, I direct your attention to your statement actually starting at the bottom of page 11 and carrying

over to page 12, you say, "A transfer from the Depot Yard to the Albina Yard averages 20.6 cars, and in the reverse direction averages 25.5 cars."

A. Yes.

Q. You say the number of cars can range from one to 56.

A. Yes.

Q. And I am sure you have the records there to tell us how many times you have had to handle more than 40 cars in the transfer?

A. Yes.

Q. All right. You have been waiting for me to ask it. Now I will ask it.

[fol. 365] (Laughter.)

A. How many times we have handled—

Q. Well, you say that it is not satisfactory to handle more than 40 cars in a transfer from the Depot Yard to the Albina Yard.

Now, you have also said that your average there is 20.6 cars, so that based on the averages this situation doesn't appear to be critical.

Now, I would like to know just how often that happened.

Mr. Higgins: Give the period, Mr. Hardin.

The Witness: I beg your pardon?

Mr. Higgins: Give the period of time which you are checking.

The Witness: This is the same period I referred to in my statement, February 1961, and the question was how many times we have handled how many cars?

By Mr. Treanor:

Q. More than 40, sir.

A. More than 40?

Q. Yes.

A. Seven times, in February 1961.

Q. How often during those moves did your engine stall making it necessary to attach additional power?

A. Well, very likely in each and every case.

Q. Well, do you know?

A. No.

Q. Now, sir, your testimony with regard to the so-called [fol. 366] back haul, once again you heard Witness Stilling testify that when you talk about a back haul that is a back haul of the traffic but it is not a back haul for the Western Pacific, is that right?

A. That is right.

Q. And I take it, or I will ask you, is the purpose of your testimony there in the next several pages to show that the complainants' route is not as attractive to the shippers as the Southern Pacific's route is?

Mr. Higgins: If the Examiner please, I will have to interrupt and object.

If he is inquiring about purpose, that is a question for counsel, and the purpose is to show the unnecessary wasteful transportation that would result.

Mr. Treanor: Well, now, we are going to get a little argumentative in how wasteful that is.

Mr. Higgins: We will argue it on brief.

Mr. Treanor: Does this witness intend by his testimony to show this as wasteful transportation?

Mr. Farrell: The testimony speaks for itself, counsel.

Mr. Treanor: That is what I thought, but I have just been told that Mr. Higgins wants to answer the question.

Mr. Farrell: He thought you wanted a supplement.

Mr. Burkett: You had better file a brief and educate everybody at that time.

[fol. 367] Exam. Wright: Direct this question to the witness.

By Mr. Treanor:

Q. Does this in your opinion show wasteful transportation?

A. Well, it costs money to haul cars.

Q. At whose cost?

A. Well, whoever is handling them.

Q. Well, if you handle the traffic of the Southern Pacific over this route you don't pay any more than if you were handling your traffic, do you?

A. No.

Q. And you wouldn't want to substitute your judgment for that of the shippers as to whether or not this is a disability, would you, sir?

A. No.

Q. Now, sir, you say that—and this is on page 14—you talk about the fact that Southern Pacific Company's schedules have been arranged to make the proper connections with your trains.

A. I didn't say anything about them being arranged. I said that—

Q. Well, they are today so set up.

A. The schedules are such.

Q. It would be possible, would it not, sir, to also cooperate with the Great Northern in establishment of schedules to handle traffic if it were to move in any substantial volume?

[fol. 368] A. Oh, I wouldn't know about that.

Q. You wouldn't be the proper man to determine that?

A. No.

Mr. Treanor: Your Honor, I am in a position here where I feel I must object to this witness' introduction of testimony as to the cost of handling the switch moves on the one hand between the Great Northern and the Union Pacific and the Southern Pacific with the Union Pacific because he has testified that he has no personal knowledge of the component parts of those figures.

Exam. Wright: Are you referring to the $3.25 item?

Mr. Treanor: Yes, sir.

Mr. Higgins: Mr. Examiner—

Are you finished, sir?

Exam. Wright: As I understand, he has just testified that is a charge that is made by this Terminal Company.

Mr. Hobbs: That is right.

Exam. Wright: I will let that stand. I assume the charge is made for all cars, no matter what line is involved.

The Witness: That is right.

Mr. Hobbs: That is it.

Exam. Wright: Does that conclude your cross?

Mr. Treanor: Yes, sir. I think Mr. Pfrommer has one.

Exam. Wright: All right.

By Mr. Pfrommer:

Q. I just wanted to ask one or two questions.

[fol. 369] Mr. Hardin, where you used the word "transfer" in your testimony, would you define that term, just to make sure that it is clear?

Does it include only those instances where the locomotive is actually pulling a load?

A. (No response.)

Q. Cars?

A. Do you mean switch engines, the locomotive handling the cutter car?

Q. Are light moves normally included in a count of transfer moves?

A. They are included in the transfer moves, but when I refer to transfers I refer to the times that the engines handle cars.

Q. On page 3 in your testimony, am I correct in saying that there were approximately 13 light movements between the Southern Pacific and the Union Pacific in each direction during the month of February 1961?

A. Yes, that is approximately. I can—

Q. All right. Am I correct in stating that your apparent scheduling of traffic between the Southern Pacific and Union Pacific is occasioned by the time that the traffic becomes available rather than any rigid time schedule?

A. That is right. There are not any defined schedules for transfer movement.

[fol. 370] Mr. Pfrommer: Thank you.

Exam. Wright: Is that all you have, Mr. Pfrommer?

Mr. Pfrommer: Yes, thank you.

Exam. Wright: Redirect?

OFFER IN EVIDENCE

Mr. Higgins: I have no redirect, and I offer Exhibit No. 27, sir.

Exam. Wright: Any objection to Exhibit No. 27?

Mr. Treanor: No, sir.

Exam. Wright: Exhibit No. 27 is received in evidence.

(Defendants' Exhibit No. 27, Witness Hardin, was received in evidence.)

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[fol. 372] PROCEEDINGS

Exam. Wright: Come to order, please.

Mr. Treanor, do you have your witness available today?

Mr. Treanor: Yes, sir, he is here.

Mr. Roeder.

G. E. ROEDER was duly sworn and testified as follows:

Exam. Wright: Be seated.

Mr. Treanor: Mr. Examiner, Mr. Roeder's statement is in prepared form, and copies were distributed to the parties yesterday.

I would like to request your permission to have him read this as his direct testimony.

Exam. Wright: Granted.

Direct examination.

The Witness: My name is G. E. Roeder. I am Secretary and Traffic Manager of Portland Produce Merchants Association, Inc. My address is 335 S. E. Morrison, Portland 14, Oregon.

I have worked in this office since 1918, and have been in my present position since 1925. My duties and responsibilities cover the handling of traffic matters for the membership, including the quotation of rates on fresh fruits and vegetables, auditing freight charges, making requests for improved services, et cetera, and generally representing the Association in other matters such as legislation. [fol. 373] The Association is a trade organization which was created around 1910. It serves as an association of wholesale distributors and brokers of fresh fruits and vegetables with offices and warehouses in the Portland, Oregon, area.

I am appearing in this proceeding because I feel we have been hurt by the failure of the carriers to publish the joint routes and rates via Bieber to and from points on the Union Pacific and Northern Pacific. The present restrictions on the final destinations of carload traffic moving from California hamper our efforts to divert this traffic to various destinations. A good example is potatoes originating on the Santa Fe in California and routed to Portland via Bieber. Those shipments cannot now be diverted to destinations on the Union Pacific or Northern Pacific because the through rate would not apply, and the resulting combination would be very high. This problem is a serious one to us. As a result, whenever, at the time of originating a shipment, the final destination is in doubt or on "rollers," we route them away from the Bieber route. This is an important consideration on the movement of Shafter District potatoes moving to the Pacific Northwest.

We have been satisfied with our service via the Bieber route whenever we have been able to use it. We feel that if the route were also available to the Union Pacific and Northern Pacific that it would materially benefit our Association. It would provide more expeditious routings and [fol. 374] provide more than route through this area. We desire the opportunity to use the Bieber Gateway, for example, to destinations in the Pacific Northwest north of Wishram, Washington. I believe that it would open up

many more markets to unsold cars moving over the Bieber route.

Mr. Treanor: That completes the direct examination of this witness.

Exam. Wright: Cross examination?

Cross examination.

By Mr. Burkett:

Q. Mr. Roeder, would you please amplify on this example of potatoes originating on the Santa Fe? To what destinations, for example, would you be interested in diverting such a car?

A. The firms which I represent distribute not only in the Portland area, but also distribute to major markets in the Pacific Northwest, such as Spokane, Walla Walla, Yakima, other points north of Portland.

Q. Well, now, if that shipment were routed by Portland, couldn't the car be diverted to Spokane?

A. It could.

Q. Is there any point in the Pacific Northwest to which you make shipments to which such a car could not be diverted if it were routed by Portland?

A. The point, as far as we are concerned, is that—

Q. Would you answer the question, please, yes or no.

[fol. 375] Mr. Treanor: I believe he is trying to answer it, Mr. Burkett.

A. (Continuing) —that there are many instances in which these cars are already rolling via the Bieber route, and when we have a market for them we have to determine first that they may go only to such points on the Great Northern where that is possible.

Mr. Burkett: Mr. Reporter, will you read the question, please.

Exam. Wright: The reporter will read the question.

(Question read.)

The Witness: If it were routed by Portland, yes, there are none that I know of.

By Mr. Burkett:

Q. There are no such points?

A. Yes, sir.

Q. Now, in addition to having the—strike that, please. When traffic is routed out of Bakersfield, by what carrier is it usually routed, by Southern Pacific Company or by the Atchison, Topeka & Santa Fe Railway Company?

A. By both.

Q. Isn't it a fact that if it is routed out of Bakersfield by the Santa Fe, that also you would have the same rates to points in the Pacific Northwest as if it were routed out by Southern Pacific?

Mr. Treanor: I object, just for clarification.

[fol. 376] Do you mean in that question when it is routed Santa Fe-Southern Pacific-Portland, or Santa Fe via the inside gateway? I would like to have that clarified, Mr. Examiner.

Exam. Wright: Can you rephrase the question?

By Mr. Burkett:

Q. If a shipment originates at Bakersfield by either Santa Fe or Southern Pacific, is it not a fact that you now have a full runout of rates to all destinations in the Pacific Northwest?

A. If routed by the Southern Pacific from Stockton, yes.

Q. And that is today you have two routes from Bakersfield, one the Santa Fe-Southern Pacific, and the other the Southern Pacific all the way to Portland?

A. Right.

Mr. Burkett: That is all I have.

Exam. Wright: Any further cross?

By Mr. Farrell:

Q. Mr. Roeder, I represent the Northern Pacific.

You are aware of the fact that the Bieber line has existed since 1931, are you not, some 30 years?

A. That is right.

Q. And all during that period of time you have been traffic manager for this association at Portland, have you not?

A. Yes.

Q. Have you ever in the entire 30 years ever made any request to the Northern Pacific that they enter into through [fol. 377] rates with the Great Northern and Western Pacific, via the Bieber Gateway?

A. Informally we have, because there have been instances where we have been definitely hurt by having cars already on the Western Pacific-Great Northern route.

I have in mind one in particular right now that was intended for Walla Walla. That is, it was rolling; it had no home at the time and could have gone to Walla Walla because there was a market for it.

The only alternative, since they needed a highly perishable commodity—

Q. That was a single carrier, Mr. Roeder?

A. One car.

Q. When did that occur?

A. Several years ago now.

Q. And did you ever, as a result of your problems with that car, ever make a written request to the Northern Pacific Railroad?

A. Only informally.

Q. Did you ever make a request to the North Pacific Coast Freight Bureau?

A. No.

Q. Normally, do you make such requests to the North Coast Freight Bureau, or the Railroads involved?

A. If we feel there is a possibility.

Mr. Farrell: No further questions.

[fol. 378] Exam. Wright: Any further cross?

(No response.)

Exam. Wright: Redirect?
Mr. Treanor: Just one question.

Redirect examination.

By Mr. Treanor:

Q. Mr. Roeder, would you like to make a request right now on this record?
A. I would.

Recross examination.

By Mr. Farrell:

Q. And you decided to come down here and testify after the Western Pacific contacted you and asked you if you would come down here and help them out in this case?
A. That was the first notice I had of the complaint.

Mr. Farrell: Thank you.
Exam. Wright: Thank you very much, Mr. Roeder, you are excused.

(Witness excused.)

Exam. Wright: That concludes your direct presentation, as I understand it.
Mr. Treanor: Yes, sir, it does.
Exam. Wright: Are the defendants ready to proceed?
Mr. Hobbs: Yes, sir. We call Mr. Evers, please.

C. W. Evers was duly sworn and testified as follows:

Mr. Hobbs: Mr. Examiner, there has been distributed [fol. 379] to all present here two exhibits which Mr. Evers will refer to.
The first one is headed, "Northbound Freight Train Schedules." Might it have a number for identification?

Exam. Wright: That will be No. 28 for identification.

Mr. Hobbs: The second exhibit is headed, "Southbound Freight Schedules," and I presume it will be No. 29.

Exam. Wright: 29.

(Defendants' Exhibits Nos. 28 and 29, Witness Evers, were marked for identification.)

Direct examination.

By Mr. Hobbs:

Q. Now, will you state your name for the record, please, Mr. Evers?

A. C. W. Evers.

Q. And what is your address?

A. 752 Pittock Block, Portland, Oregon.

Q. And by whom are you employed, Mr. Evers?

A. Union Pacific Railroad.

Q. And in what capacity?

A. Traffic manager for the Western District.

Q. And just what does that district embrace, what territory?

A. It embraces the territory covered by the complaint, except that the southern terminus of my territory is the Oregon-California line, extending northerly through Oregon, Washington, northern Idaho, British Columbia, the Provinces of Canada and Alaska.

[fol. 380] Q. And how long have you been employed by the Union Pacific?

A. Since 1914.

Q. And has all your experience been, with the Union Pacific, been in traffic matters?

A. Not entirely. Some of it has been in the operating department, and some in the transportation department. The greater portion, however, in the traffic department.

Q. And just briefly, would you outline your present duties?

A. It is supervision over freight and passenger rate sales and services of the Union Pacific Lines within the territory

described, and sales direction in the off-line territory included within the area assigned to me.

Q. Are you familiar generally, Mr. Evans, with the issues that are involved in this proceeding?

A. I am.

Q. And in connection therewith, have you prepared the exhibits which have been introduced and marked for identification Nos. 28 and 29?

A. I have.

Q. I wonder if you would proceed, then, please, and make such comments on those exhibits as you think is necessary.

A. Well, first let me say that the data shown on the two exhibits reflect the service that will be accorded under existing freight schedules of both the Southern Pacific, Union Pacific, of the direct Bieber route, and also of the [fol. 381] Bieber route in connection with the Union Pacific in the event the rates and routes sought in the complaint are granted.

For example, in referring to Exhibit No. 28, from Los Angeles to Baker, Oregon, the service which would be accorded on traffic moving in connection with the NCP, which operates daily, then, in connection with the Union Pacific's 198-CBX, would provide an elapsed schedule of 96 hours.

Q. When you refer to train NCP, by whom is that operated?

A. That is operated by the Southern Pacific.

Now, using the Bieber routes, SWG schedule from Los Angeles to Baker, the elapsed time would be 125 hours.

Now, we can take Seattle as another instance, using again the Southern Pacific's NCP from Los Angeles to Seattle, connecting at Portland with Union Pacific's No. 691, the elapsed time would be 67 hours 30 minutes.

Now, in connection with the Bieber route, SWG from the same points, the elapsed time via the Bieber route, Portland-Union Pacific would be 89 hours, whereas the elapsed time via the direct route of the Bieber route, Los Angeles to Seattle, would be 67 hours.

Q. And by that you mean in connection with the Great Northern, is that right?

A. Yes, sir. Now, let's take Spokane as an example.

Using the schedule of the Southern Pacific's OVE-RPS, to Portland, thence Union Pacific's No. 198, Portland to [fol. 382] Spokane, the elapsed time—I would like to make a correction.

The OVE-RPS operates from San Francisco and not Los Angeles so, therefore, the elapsed time, San Francisco to Spokane, would be 69 hours, and again using the Bieber route, SWG-San Francisco to Spokane, the elapsed time would be 97 hours; whereas, the Bieber route direct to Spokane, the elapsed time would be 63 hours.

Now, there are many similar situations which might be cited, but all of which will clearly indicate that the schedules of the Southern Pacific and Union Pacific are coordinated in order to provide the least possible dead time at Portland, whereas via the Portland Gateway, in connection with the Bieber route, there would be considerable dead time.

Q. Now, those trains of the Southern Pacific, Mr. Evers, to which you have referred, and the Union Pacific trains connecting with them, are those the trains that are used at the present time in moving traffic from California to the points that you have referred to?

A. Generally, yes, except, of course, there would be traffic handled on the other trains that do not operate daily.

For example, the Starpacer, which operates from Los Angeles via the Southern Pacific on Tuesday, Wednesday, Thursday and Friday and which, of course, connects with us at Portland, and in connection with that schedule it will be noticed the elapsed time is considerably less than that [fol. 383] which applies on traffic moving on the NCP, and our connections at Portland.

The same statements would apply, also, on traffic moving north from Oakland on the PCE, which operates via the Southern Pacific on Monday, Tuesday, Wednesday and Thursday. The Union Pacific schedules are daily.

Q. Now, does that complete your comments on Exhibit 28?

A. Yes.

Q. Now, those are all northbound freight train schedules, aren't they?

A. Yes, sir.

Q. Your Exhibit 29, as I understand it, refers to the southbound schedules?

A. That is right.

Q. Will you proceed and make such comment as you desire about those trains.

A. From Baker, Oregon to San Francisco, using existing service of the Union Pacific from Baker to Albina, connecting thence with the Southern Pacific's BAS, which operates daily, the elapsed time is 71 hours 30 minutes.

From Spokane, using the existing service of the Union Pacific to San Francisco, connecting at Portland with Southern Pacific's BAS, the elapsed time would again be 71 hours and 30 minutes, and to Los Angeles would be 89 hours.

Now, from Seattle, using Union Pacific Train No. 690, and connecting with the daily Advance, PNL, leaving Portland [fol. 384] at 5:00 p.m., the elapsed time to San Francisco would be 72 hours 30 minutes,—no, that is to Los Angeles.

Q. That is to Los Angeles?

A. Would be 72 hours 30 minutes.

To San Francisco, it would be 48 hours and 30 minutes.

Now, using the Bieber route, and the same Union Pacific trains, Baker to Oakland, connecting at Portland with the Bieber route's CAL, the elapsed time would be 74 hours.

From Seattle, using Union Pacific's No. 690, and also connecting that train—that train would not connect with the CAL but, instead, would connect with the GWS—the elapsed time would be 91 hours.

Many similar instances could be shown, and are shown on this statement reflecting again the fact that the Union Pacific-Southern Pacific schedules are coordinated in order to provide the minimum of dead time at Portland, whereas those of the Bieber route via Portland are not so coordinated.

Q. Now, Mr. Evers, on both of these exhibits I notice that you use as examples Baker-Spokane and Seattle. Why did you pick those particular points?

A. I selected Baker because that is a point local to the Union Pacific, and I selected Spokane and Seattle because those points are competitive with the Great Northern Bieber route, and obviously because of the much faster time applied to, or from Spokane or Seattle in connection with the Bieber route.

[fol. 385] Number one, it is decidedly doubtful if any traffic could be secured for movement via the Bieber route Portland, thence up to those points and, secondly, certainly with the knowledge which the Great Northern would have of such traffic, it is to be expected that they would very actively endeavor to influence such traffic away from the Union Pacific and to the Great Northern.

Q. Well, now, Baker is located on the main line of the Union Pacific east of Portland and also east of Oregon Trunk Junction.

A. Right.

Q. Isn't it?

A. Right.

Q. Now, would approximately the same elapsed time apply to other points east of Portland on the Union Pacific?

A. Yes, east of Portland, and also east of Portland and north of Hinkle, Oregon, to such destinations as Yakima and Walla Walla, and Lewiston.

Q. My attention has been called, Mr. Evers, on Exhibit No. 28, opposite the designation, "Arrived Baker, UP IDS, 8:00 p.m." Do you see that?

A. Arrive Baker?

Q. Yes.

A. That is UP IDS at 8:00 a.m.

Q. It is under NCP on the exhibit?

A. That should be 8:00 a.m.

[fol. 386] Exam. Wright: It is under the column NCP on the first page?

The Witness: Yes, under Column NCP, that arrival should be 8:00 a.m. (5).

By Mr. Hobbs:

Q. The (5) is correct?
A. The (5) is correct.

Exam. Wright: The exhibit will be so corrected.

By Mr. Hobbs:

Q. Do you have any further observation to make with respect to the two exhibits, Mr. Evers?
A. I think not.

Mr. Hobbs: That concludes the direct examination.
Exam. Wright: Cross-examination.

Cross examination.

By Mr. Treanor:

Q. I am assuming, Mr. Evers, that since that was obviously a typographical error, there is no change in the elapsed time that you show?
A. That is right.
Q. I think you made it very clear in your testimony that what you have shown here are only the existing schedules.
A. That is right.
Q. And the way the traffic is actually handled today.
A. Right.
Q. Now, can you tell us the proportion of traffic that moves over the Southern Pacific through Portland in connection with your line, as opposed to what comes to you [fol. 387] over the Bieber Gateway?
A. Well, it would be very close to 100 per cent.
Q. 100 per cent goes—
A. In favor of the Southern Pacific.
Q. So that your schedules today are set up in recognition of that fact?
A. I wouldn't say in recognition of that fact, but I would say that the information shown on my two exhibits reflect the service that is accorded under existing schedules.

Q. If you have an occasion to get some traffic over the inside gateway, you will make the necessary changes to provide an equivalent service?

A. You mean the Union Pacific would change its schedules?

Q. That is what I am asking you.

A. Why should we change our schedules?

Q. I don't know.

A. My answer would be that you folks would deliver the traffic to us to make our schedules.

Q. And you would not cooperate?

A. I didn't say that.

Q. Well, would you cooperate?

A. I don't think we should be expected to change our schedules.

Q. I am just asking you.

A. That is my answer.

Q. All right. I will let the record stand on that.

[fol. 388] Now, let me ask you this. Your Exhibit No. 28 showing the Bieber route shows an elapsed time to Seattle from Los Angeles of 67 hours.

A. That is right.

Q. As opposed to 67 hours 30 minutes from Los Angeles to the same point on the Southern Pacific.

A. That is right.

Q. Now, Seattle, of course, is a point served by the Great Northern.

A. That is right.

Q. And traffic is presumably moving via the inside gateway all the way to Seattle on the Great Northern.

A. Are you asking me that question?

Q. I am asking you.

A. Yes.

Q. Do you know?

A. Yes.

Q. So that where there is traffic, the schedules have been made competitive, is that right, sir, so far as the shipper is concerned?

A. (No response.)

Q. You have already indicated the Union Pacific may not be interested in cooperating, but I am talking about where the shipper is concerned, and cooperating carriers can put in the schedules.

[fol. 389] A. We have made our schedules to conform with the schedules of the Southern Pacific. Since there is no traffic of any consequence whatever coming to us at Portland from the Bieber route, obviously we have no schedule set up with the Bieber route.

Mr. Treanor: Thank you.

By Mr. Pfrommer:

Q. Mr. Evers, on your Exhibit 29, who operates the Train GWS, what railroad?

A. That is your Bieber route.

Q. All right, who operates the trains?

A. Well, it operates, if it is going to Los Angeles, Great Northern-Western Pacific-Santa Fe. It is going to Oakland, Great Northern-Western Pacific.

Q. Well, I am just seeking to be sure that the record is straight. Under the third column, from the route, in other words, under the UP heading, is GWS, and it is not headed "Bieber," so I just wanted to make sure it is clear.

A. The same response would apply also to the CAL, because that is also a Bieber route train.

Q. What does the symbol TFC stand for?

A. Trailer freight.

Q. That is the Union Pacific train, isn't it?

A. No, sir, that is a Southern Pacific train.

Q. And SPC stands for Starpacer?

A. Which train?

[fol. 390] Q. SPC.

A. Why, no, that is a trailer freight special.

Q. SPC stands for special, then?

A. That is right.

Q. Is that a different train than the Starpacer?

A. Yes, because the Starpacer operates northbound, while this train operates southbound.

Q. But except for the direction of movement, they offer the same type of service?

A. The Starpacer operates between Los Angeles and Brooklyn, and the TFC special operates between Portland and Los Angeles, yes.

Q. So it is the same train operating in reverse direction?

A. Yes.

Q. And that is a piggyback train?

A. Yes.

Q. Who operates the train PNL?

A. On what exhibit?

Q. 29.

A. The Southern Pacific.

Q. Are there any restrictions as to the type of freight that will be handled on the destination to which their freight must be going?

A. Well, all I can do in answering that question is refer to the Southern Pacific's manifest train schedule No. [fol. 391] 19, and I think that question should properly be asked of the Southern Pacific.

Q. Well, it was on your exhibit, so I want to know. I want you to go ahead and answer.

A. Yes, there are certain restrictions as to the traffic that will be handled on that train.

Q. What are the restrictions as to destinations of the traffic?

A. The advance PNL operates from Portland through to Los Angeles with traffic destined points on the Los Angeles division, including connections.

Q. All right. The same type of restriction applies to the train PNL, doesn't it?

A. (No response.)

Q. The same restrictions as you read about the Advance PNL?

A. Yes.

Mr. Pfrommer: Thank you. That is all, thank you.
Exam. Wright: Any further cross?

(No response.)

Exam. Wright: Redirect?
Mr. Hobbs: None.

OFFERS IN EVIDENCE

We offer Exhibits 28 and 29, Mr. Examiner.
Exam. Wright: Any objections?
Mr. Treanor: No.
Exam. Wright: Exhibits 28 and 29 are received in evidence.

[fol. 392] (Defendants' Exhibits Nos. 28 and 29, Witness Evers, were received in evidence.)

Exam. Wright: Thank you very much, Mr. Evers, you are excused.
The Witness: Thank you.

(Witness excused.)

Mr. Farrell: We call as our next witness Mr. L. S. Davis.

L. S. DAVIS was duly sworn and testified as follows:

Exam. Wright: Off the record.

(Discussion off the record.)

Exam. Wright: On the record.
Mr. Farrell: Mr. Examiner, if we may proceed, this witness has a prepared statement and three exhibits.
The first exhibit is marked for identification, "(LSD-1)". We ask that be given the next exhibit number, which I believe will be 30.
Exam. Wright: That will be Exhibit 30.
Mr. Farrell: The second exhibit is also marked, "(LSD-2)".
Exam. Wright: That will be No. 31 for identification.

Mr. Farrell: And the third is an exhibit consisting of a number of pages marked "(LSD-3)".

Exam. Wright: That will be Exhibit No. 32 for identification.

(Defendants' Exhibits Nos. 30, 31 and 32, Witness Davis, were marked for identification.)

[fol. 393] Mr. Farrell: Now, Mr. Examiner, we request permission to have the witness read his prepared statement into the record, and it will be supplemented by additional questions.

Exam. Wright: I am just wondering, you have additional direct besides the statement?

Mr. Farrell: Yes, I do.

Exam. Wright: This is a 19-page statement, as I see it, and I am wondering if we might not save time by giving Mr. Treanor and other counsel an opportunity to read this while we are in recess, and have the statement entered into the record the same as if read.

That is a lot of reading. I am just suggesting it.

Mr. Farrell: I appreciate that, Mr. Examiner. I certainly don't want to impose upon you or any of the rest of the parties. I do feel that the statement ought to be read. Our next witness is a short witness, and I think we will finish up in pretty good shape today.

Exam. Wright: Very well, the witness is given permission to read the statement into the record.

Mr. Farrell: Thank you, Mr. Examiner.

The Witness: May I proceed?

Exam. Wright: Yes.

Direct examination.

The Witness: My name is L. S. Davis, and I am General Freight Agent of the Northern Pacific Railway with offices [fol. 394] at Seattle, Washington. I am in charge of Rates and Divisions for the Northern Pacific Railway Company in the territory involved in this proceeding. I have been in continuous railroad service in the Pacific Northwest or

California since January 1918 except for a period of slightly over four years spent in the Army during World War II. I have been in my present position since July 1, 1955 and have previously appeared before this Commission on many occasions.

I would like first to briefly outline some historical facts pertaining to the Northern Pacific Railway in the Pacific Northwest.

In 1870, our predecessor Company, the Northern Pacific Railroad Co., started construction of a line from Kalama, Washington, extending north to connect with its other lines at Tacoma, Washington. This line, which was completed about three years later, provided the Northern Pacific with its first access to Portland, Oregon, through the medium of boat service on the Columbia River between Kalama, Washington and Portland, Oregon. In 1883, construction was started on a line from Portland to Goble, Oregon and, with the completion of this project in 1884, the Northern Pacific had direct rail access to Portland, Oregon with the Tacoma-Kalama line and the Portland-Goble line being connected with a ferry boat operation between Goble and Kalama. The line from Portland to Goble, Oregon is now operated as a part of the Spokane, Portland and [fol. 395] Seattle Railway System. Subsequently, rails were extended south of Kalama to Vancouver, Washington and, in 1908, the Columbia and Willamette Rivers between Vancouver, Washington and Portland, Oregon were bridged which provided the Northern Pacific with direct rail access to Portland, Oregon.

At this time, several segments of the Spokane, Portland and Seattle Railway System were under construction and that line was completed from Portland to Spokane in 1909. Prior to the completion of the SP&S, all traffic moving between Portland, Oregon and points south, including California, and stations on the Northern Pacific in Washington, Oregon and northern Idaho was handled over the line of the Northern Pacific extending north of Portland, Oregon via Goble, Oregon and Kalama, Washington, thence via the

red line from the latter point as shown on Exhibit LSD No. 31.

Following the completion of the SP&S in 1909, that line was established as an alternate route for the handling of traffic between Portland and points on the Northern Pacific Railway Company in Washington east of the Cascade Mountains, Oregon, northern Idaho and east with interchange between the two lines being effected at Pasco and Spokane, Washington. Utilization of the SP&S water-grade route in the handling of traffic between Portland and points on the NP east of Yakima, Washington and south and east of Pasco, Washington resulted in certain economies and more expeditious service as related to the longer [fol. 396] route of the Northern Pacific extending north from Portland to Auburn, Washington and thence east.

It has long been the policy of the Northern Pacific to establish joint rates with the SP&S. At the present time, the NP maintains a complete line of joint rates with the SP&S between Portland and points on the NP, Yakima, Washington and east via Pasco or Spokane, Washington. This rate coverage is also extended to the connecting line of the Southern Pacific at Portland, Oregon. Thus, the SP&S is utilized in the handling of traffic between points on the SP in Oregon, California, Arizona, et cetera, and points on the Northern Pacific Railway, Yakima, Washington and east.

Before going into a description of the route of the "Inside Gateway" between California and the Northwest, I would like to present a few historical facts about certain portions of that line.

In Finance Docket No. 14392111, ICC 3 decided May 3, 1926, the Commission authorized the Oregon Trunk to construct a line of railroad south of Bend, Oregon into Klamath County. Subsequently, in the Third Supplemental Report 138 ICC 99, Finance Docket Nos. 6382, 6384 and 6385, the Commission permitted the Great Northern Railway Company to take over the obligation of the Oregon Trunk for this construction and also found that public

convenience and necessity required the operation of the Great Northern over the track of the SP&S between Fort [fol. 397] Wright Junction, Washington (in close proximity to Spokane, Washington) and Vancouver, Washington and also over tracks of the Oregon Trunk Railway between Wishram, Washington and Bend, Oregon.

Under the terms of a contract, the SP&S and OT Railways agreed to handle traffic of the Great Northern over their lines between the points previously named.

Mr. Treanor: At this point I would like to interrupt, not to make an objection, but this contract will be available if we need it, is that correct?

Mr. Farrell: I simply want the Commission to understand the basic facts. If there is some information that is needed here, counsel, I think we can supply you with it, but I certainly don't intend to put the contract in evidence at this point unless demand is made for it.

Mr. Treanor: Well, he is proceeding to give some more testimony, Mr. Examiner, and I don't know how far he is going to go, to give his impressions of this contract, and I would like to know if the contract will be available for me in case I want to take him on that.

Mr. Farrell: I have the contract here available, counsel.

Exam. Wright: Very well, proceed.

The Witness: This arrangement is subsequently described as a "car-haul contract," and it did not involve the participation of the SP&S or OT Railways in the rates as [fol. 398] such nor divisions thereof. Authorization was also given the Great Northern for operation over the Southern Pacific between Chemult and Klamath Falls, Oregon.

In Finance Docket No. 7439 decided June 9, 1930, 166 ICC 3, the Commission authorized an extension of the Great Northern line south of Klamath Falls, Oregon to meet a proposed extension of the Western Pacific north of Keddie to Bieber, California which was also authorized in the same report in Finance Docket No. 7440. The extension of these lines resulted in establishment of the so-called "Inside

Gateway" which is shown on Exhibit LSD No. 30 in green with the yellow line of the Oregon trunk and SP&S Railways being employed under the car-haul contract by the Great Northern to reach its connections with the SP&S at Vancouver and Fort Wright Junction, Washington.

Traffic moving via the "Inside Gateway" between California and Spokane is handled east of Wishram, Washington over the SP&S under the car-haul contract for a distance of 271 miles. The distance from Wishram to Spokane via Vancouver and Everett, Washington over the line of the GN is 600 miles or 329 miles greater than the service route used east of Wishram to Spokane, Washington previously mentioned.

The route sought in this complaint would involve a movement of 106 miles west of Wishram, Washington over the yellow line to Portland, Oregon and 533 miles over the red [fol. 399] line of the Northern Pacific as shown on Exhibit LSD No. 31 to Spokane, Washington or a total distance of 639 miles as contrasted with a distance of 271 miles east of Wishram over the yellow line to Pasco, Washington, thence over the red line of the Northern Pacific to Spokane. Thus, the route sought in this complaint via Portland, Oregon to Spokane, Washington is 368 miles longer than the route east of Wishram to Spokane, Washington.

A carload of freight moving from San Francisco, California to Walla Walla, Washington, for example, via the route sought in this complaint would travel over the green line to Portland, Oregon shown in Exhibit LSD No. 30, thence via the red line to Auburn, Washington and east thereof via Pasco to the destination Walla Walla, Washington. It will be noted from Exhibit LSD No. 32, page 3, that the distance via this route is 1339 miles as compared with a distance of 1014 miles over the blue line of the SP to Portland, Oregon, the yellow line of the SP&S to Pasco and the red line of the NP to Walla Walla, Washington. The distance from San Francisco, California to Walla Walla, Washington via the SP to Portland, Oregon, thence over the red line of the NP through Auburn and Pasco is

1170 miles. I would also like to point out another route from San Francisco, California to Walla Walla, Washington via the green line to Bend, Oregon, thence the OT-SP&S yellow line to Pasco and the red line of the NP to Walla Walla, Washington, a distance of only 971 miles or 368 miles less than the route sought in this complaint via [fol. 400] Portland, Oregon.

By Mr. Farrell:

Q. Now, Mr. Davis, the complainant has not sought routes on that basis in this complaint, has it?

A. No, it has not.

Mr. Treanor: That is his impression.

By Mr. Farrell:

Q. This is your impression from the routes sought in the complaint?

A. Yes.

A car moving from San Francisco, California to Shelton, Washington under the route sought in this complaint via Portland, Oregon would travel a distance of 1039 miles as compared with a distance of 870 miles via the SP-NP route and 1019 miles via WP-GN-Bend, Ore.-OT-SP&S-Vancouver, Washington, thence NP as shown on page 1 of Exhibit LSD No. 32.

Exhibit LSD No. 32 contains many similar examples. I have merely selected Shelton, Washington as a representative point on the NP in Washington west of the Cascade Mountains and Walla Walla and Spokane, Washington as representative of the situation in eastern Washington, Oregon and northern Idaho.

It has been the policy of the NP to confine its participation in rates between California and the Pacific Northwest area involved in this proceeding to the Portland, Oregon route of the Southern Pacific. A few exceptions have been made to this policy which are as follows:

Pacific Southcoast Freight Bureau Tariff 1016, ICC No. [fol. 401] 1590, of W. O. Gentle, Tariff Publishing Officer, contains a complete line of class rates between points served exclusively by the Western Pacific and its subsidiary lines and points on the Northern Pacific in the area involved in the complaint. Routing published in connection with these class rates is via WP-Bieber-GN-Bend-Oregon Trunk-Wishram-SP&S-Vancouver, Washington-NP to points west of Easton, Washington. To points Easton, Washington and east, routing is provided via SP-GN-Bend-OT-Wishram-PS&S-Pasco-NP. This results in breaking the routes as between Vancouver and Pasco, Washington at the summit of the Cascade Mountains, thus utilizing each gateway to its best advantage in the interest of economical and efficient transportation. These routes enable class-rated traffic to move over the shortest possible routes obtainable in connection with the Western Pacific through Bieber, California.

Q. Mr. Davis, could you locate Easton, Washington on your Exhibit No. 31?

A. Following the red line from Auburn, going east through Palmer Junction, to Lester, Easton is the next station.

Q. Thank you.

A. The NP also joined the so-called "Inside Gateway" in rates on iron and steel pipe from Decoto, California (Decoto is also served by the SP but industry located on WP and no interchange at this point) and points in the Pacific Northwest.

The NP also participates in rates via the "Inside Gate-[fol. 402] way" on motor vehicles and related articles from Oakland and Decoto, California to points in Washington and northern Idaho embraced by the complainant.

These rates are published in Pacific Southcoast Freight Bureau Tariff No. 1-S, ICC No. 1352, of W. O. Gentle, Tariff Publishing Officer.

The Northern Pacific also concurred in piggyback rates on automobiles from Decoto and Melrose, California to

Seattle, Renton, Pasco and Spokane, Washington via the "Inside Gateway." These rates are published in Pacific Southcoast Freight Bureau Tariff 297-D, ICC No. 1678, of W. O. Gentle, Tariff Publishing Officer. The routing in connection with the pipe and automobiles just previously mentioned is via WP-GN-Portland, thence NP.

In Pacific Southcoast Freight Bureau Tariff No. 220-D, ICC No. 1514, of W. O. Gentle, Tariff Publishing Officer, rates are carried on livestock between points on the WP and connections on the one hand and points on the NP and connections on the other hand in the states of Washington, Oregon and Idaho. From the area Yakima, Washington and east, except Pasco, routing is published via NP-Pasco-SP&S-Wishram-OT-Bend-GN-Bieber-WP or WP and connections. In connection with stations Yakima, Washington and west, routing is provided via NP-Portland-GN-Bieber-WP or WP and connections.

In the period of almost six years that I have been in [fol. 403] charge of rates in the Seattle office of the Northern Pacific Railway Company, I have been directly associated with the handling of several thousand shipper proposals for rates between points in California and the Pacific Northwest. To the best of my knowledge and recollection, my Company has been presented with only one shipper application for rates in connection with the Western Pacific and this single proposal was handled to the satisfaction of the shipper.

The Northern Pacific has been ready and willing to join the Western Pacific in rates involving local points on the line of the latter and, as a matter of fact, a few such rates outside of the area of this complaint, have been established for the purpose of permitting shippers situated locally on the WP to reach markets on the Northern Pacific Railway. In general, and with few exceptions, we have refrained from making rates via the "Inside Gateway" where the points in California are competitive with the Southern Pacific Company. One of the reasons the Northern Pacific has taken this position is the fact that one of its strongest competitors in the Northwest, the Great Northern Railway

Company, is a participant in the "Inside Gateway" and information concerning any competitive traffic we might handle via that route would immediately become available to our competitor for solicitation of future movements. In the Southern Pacific, we have a connection which is not involved in transportation north of Portland, Oregon, and [fol. 404] consequently, the route of that Company does not present the same competitive disadvantages to us as prevails in connection with the "Inside Gateway."

The Spokane, Portland and Seattle Railway, which, in turn, owns the Oregon Trunk and Oregon Electric Railways, is owned jointly by the Northern Pacific and Great Northern and is under the common management and control of those lines. See Chicago, Milwaukee, St. Paul and Pacific Railroad Company v. Spokane, Portland and Seattle Railway Company 300 ICC 453.

As I have previously mentioned, traffic of the "Inside Gateway" is bridged over the line of the Oregon Trunk from Bend, Oregon to Wishram, Washington, thence over the SP&S to Spokane or Vancouver, Washington under a car-haul contract. There is also a contract in effect between the Great Northern and SP&S for the handling of traffic between Vancouver, Washington and Portland, Oregon which, when coupled with the previously mentioned contract, enables the Great Northern to handle "Inside Gateway" traffic between Bend and Portland, Oregon over the rails of the OT and SP&S.

I have previously pointed out the circuity of the route sought in this complaint via Portland, Oregon to points east of the Cascade Mountains where, to Walla Walla, Washington, the distance is 368 miles greater than the OT-SP&S-Pasco-NP route and 325 miles greater than the SP-SP&S-Pasco-NP route. The "Inside Gateway" route via Portland, Oregon thence NP would require the NP to handle [fol. 405] all traffic over this circuitous route which involves crossing the Cascade Mountains at an elevation of 2,837 feet. The Northern Pacific would not have any escape from handling traffic via the proposed circuitous route as is

the case in connection with the route of the Southern Pacific to Portland where the economical and shorter water-grade route of the SP&S can be, and is, extensively employed for the handling of traffic between Portland, Oregon and Pasco, Washington for delivery to or receipt from the NP under joint through rates from which the SP&S is compensated by a division proportioned to the service performed.

As a matter of fact, many shippers specify SP&S routing on their bills of lading for service or other reasons and the Operating Department of the Northern Pacific has issued instructions that traffic brought into Pasco, Washington for movement beyond to California shall be turned over to the SP&S at that point for handling to Portland and delivery to the SP rather than move it via our longer route through Auburn, Washington and thence to Portland, Oregon. The principal exceptions to this rule are cars accorded a transit privilege at some point on the NP between Pasco, Washington and Portland, Oregon or when the shipper specifically requests the use of the longer route. A relatively few cars fall within the scope of these exceptions.

Even if the SP&S were included as a participating car-
[fol. 406] rier in the route via WP-GN-Portland-SP&S-Pasco-NP, it would be necessary to perform wasteful service in the amount of 212 miles which represents the round-trip mileage Wishram, Washington to Portland, Oregon and return. In other words, before advancing the movement of a car one mile east of Wishram, it would have to be hauled in the opposition direction for 106 miles and returned the same distance for a total of 212 miles.

It is readily apparent that service over a route having excessive circuity is inferior to that provided by a short route and, as illustrative of this situation—

Mr. Treanor: Mr. Examiner, I would just like to note for the record that I would like to record an objection to the argument Mr. Davis is making about whether the so-called routes are obviously inferior, et cetera.

Exam. Wright: Your objection is noted.

Mr. Farrell: I think this gentleman is an expert witness, Mr. Examiner. I think he is expressing his opinion.

Mr. Treanor: I just noted my objection, Mr. Examiner.

Mr. Farrell: I just noted my opinion, also.

Exam. Wright: Proceed.

The Witness: (Continuing) —I cite the following examples of service:

A car moving from Los Angeles to Lewiston, Idaho via SP-Portland-SP&S-Pasco-NP would leave origin at 8:10 [fol. 407] a.m., Monday, and arrive Lewiston 3:15 a.m., Friday, and a car moving via the same route to Walla Walla would receive the same service except it would arrive at destination at 7:00 a.m.

Service via the route of the Southern Pacific to Portland thence NP through Auburn and Pasco, Washington to Lewiston and Walla Walla is 24 hours longer than via the route just previously mentioned which would result in cars arriving on Saturday instead of Friday. Service via the "Inside Gateway" over the Portland, Oregon route sought in this complaint from and to the same points just mentioned would also be subject to a greater transit time of 24 hours than is available via the SP-SP&S-NP route.

Service from Los Angeles to Walla Walla, Washington and Lewiston, Idaho, via the "Inside Gateway" to Bend, thence OT-Wishram-SP&S-Pasco-NP would, under favorable conditions, be 24 hours less than the present SP-SP&S-NP schedule which would result in a Thursday morning arrival at Walla Walla, Washington and Lewiston, Idaho on a car leaving Los Angeles, California Monday morning.

In other words, service via the latter route could produce a saving of two days' transit time under the route proposed in this complaint. In no case would the time saving be less than 24 hours. Service from San Francisco would be on a basis related to that just described from Los Angeles, California.

[fol. 408] My previous remarks about circuitous distances and service under the route via Portland, Oregon proposed in this complaint have been confined to a few points but

they are representative of the wasteful and uneconomical transportation practices which would generally prevail in the area served by the Northern Pacific east of Yakima, Washington if the route sought in this complaint were established.

Mr. Treanor: Mr. Examiner, may I have a continuing objection to this so I won't have to—

Exam. Wright: You may.

The Witness: An example of the utilization of short and economical routes is demonstrated in connection with rates between points in California and stations on the SP&S via the "Inside Gateway" in which the OT and SP&S participate in divisional allowances rather than handling the traffic under the previously mentioned car-haul contracts. A typical example is South Cheney, Washington, which the SP&S reaches by performing 254 miles of service east of Wishram, Washington. To reach Cheney, Washington, an adjacent community on the Northern Pacific where an important industry, namely, a flour mill, is located, which could be expected to use the sought route, the complaint would require the performance of 106 miles of service, Wishram, Washington to Portland, Oregon over the SP&S for account of the Great Northern and 516 miles of Northern Pacific service from Portland to Cheney, Washington [fol. 409] or a total of 622 miles which is 368 miles more service than performed by the SP&S to reach this immediately adjacent community.

Another example of wasteful and uneconomical service which would be required under the complaint is illustrated at Kennewick, Washington where the SP&S has 123 miles of service to perform east of Wishram. To reach Richland, Washington, a point on the NP where the Atomic Energy Commission maintains a large and important plant and which is in close proximity to Kennewick, Washington, the route via Portland, Oregon proposed in the complaint would require 505 miles of service from Wishram, Washington via Portland, Oregon and Auburn, Washington.

Even if the complainant sought an alternate route such as is provided in connection with the SP which would include service of the SP&S from Portland, Oregon to Pasco, Washington and thence NP to Richland, a direct out-of-line haul from Wishram, Washington to Portland, Oregon and return to Wishram, Washington of 212 miles would occur over and above the direct route east of Wishram, Washington via the SP&S to Pasco—thence NP to Richland, Washington. These illustrations again are typical of the wasteful, uneconomical and discriminatory situations which would be set up in the general territory of the Northern Pacific Railway, Yakima, Washington and east if the Commission should render a decision in this case favorable to the complainant.

[fol. 410] Turning to the territory west of the Cascade Mountains and again using Shelton, Washington as an example, the complainant would require cars to be handled out-of-line from Vancouver, Washington to Portland, Oregon and returned back through Vancouver, Washington, an out-of-line distance of 20 miles for furtherance to Shelton, Washington over the Northern Pacific.

While the out-of-line distance is shorter than the illustrations used east of the Cascade Mountains, the out-of-line haul of 20 miles does represent costly and wasteful transportation.

Due to the substantial bridge mileage involved in the Portland-Vancouver segment of the SP&S, this is one of the most costly pieces of railroad mile for mile ever constructed in the West. In recognition of this expensive piece of line and the terminal situation in Portland, Oregon, the SP&S receives extra compensation in the form of a terminal deduction on traffic handled from, to or through Portland, Oregon, under joint through rates.

Mr. Treanor: At this point I would like to enter an objection, Mr. Examiner.

I don't believe Mr. Davis has yet established his qualifications for giving all of this detailed information about the problems of the SP&S.

The Commission, of course, is well aware of the owner-
[fol. 411] ship of the SP&S, but I don't know as Mr. Davis is qualified to do this.

By Mr. Farrell:

Q. Mr. Davis, will you state your employment with the SP&S, if any?

A. I spent 30 years with the SP&S and Oregon Trunk Railways.

Q. And what position did you hold during that period of time?

A. Oh, I held a number of positions. I was in the operating department, various positions.

I was in the traffic department, traveling freight agent, city freight agent, handled rates and divisions, and general matters pertaining to traffic.

Mr. Treanor: Is that the end of the qualification? He didn't say whether he works for them now.

Mr. Burkett: What has that got to do with it?

Mr. Treanor: I think it has a lot to do with it.

By Mr. Farrell:

Q. When did your employment commence?

A. In January 1918.

Q. And you worked until when?

A. April 16, 1948.

Q. And what position did you assume at that time?

A. With the Northern Pacific?

Q. Yes.

A. Assistant general freight agent.

Q. And in your present capacity, do you have occasion to work with the SP&S?

[fol. 412] A. I do frequently.

Q. And that is true right up to the present day?

A. That is correct.

Mr. Farrell: I submit this witness is eminently qualified, Mr. Examiner.

Mr. Treanor: Mr. Examiner, he may be qualified on certain factors, but he is not qualified on the basis of having worked for them continually until 1948, and then associated with them for the last few years, to put in this type of detailed testimony.

And, furthermore, I will withdraw my objection if you will agree his testimony is confined to prior to 1948.

By Mr. Farrell:

Q. Mr. Davis, are you presently familiar with the conditions on the SP&S Railway?

A. I am.

Q. Do you presently work with the establishment of rates?

A. Yes, sir.

Q. And is their rate policy carried on in conjunction with your office?

A. It is.

Q. And are you also generally familiar with operations on that railroad?

A. In a general way, yes.

Q. And in your opinion has this materially changed in any way since 1948?

[fol. 413] A. No.

Mr. Farrell: May the witness proceed, Mr. Examiner?

Mr. Treanor: Well, I would like to continue my objection, sir. I don't believe that that qualifies that man to give this kind of information.

Exam. Wright: Is your objection directed mainly to this testimony about extra compensation?

Mr. Treanor: Yes, sir, and all through his testimony he gets into the problems of the SP&S and their monies and their operating difficulties, and I don't think he is qualified to do it.

Exam. Wright: Well, I gather—are you testifying from your personal knowledge?

The Witness: Yes, I am, Mr. Examiner.

With respect to this extra compensation that is published in a division sheet.

Exam. Wright: I will overrule the objection. Go ahead.

The Witness: In recognition of this expensive piece of line and the terminal situation in Portland, Oregon, the SP&S receives extra compensation in the form of a terminal deduction on traffic handled from, to or through Portland, Oregon, under joint through rates.

It is over this segment of line that the complainant would require the performance of 20 miles of out-of-line service in order to reach all stations on the Northern Pacific [fol. 414] Railway west of the Cascade Mountains.

I have previously mentioned the joint ownership and common management and control of the SP&S and Oregon Trunk by the Great Northern and Northern Pacific Railways. My Company takes the position that on any Northern Pacific traffic on which the lines of the OT and SP&S are used to perform intermediate service between the Great Northern at Bend on the one hand and, on the other, Vancouver, Washington, Portland, Oregon, Pasco or Spokane, Washington, the OT and SP&S should participate in the rates on a normal division basis. The complainant in this case has never sought to establish rates on such a basis.

The revenue derived by the SP&S and OT for the handling of "Inside Gateway" traffic under the car-haul contract is low as a consequence of being related to out-of-pocket costs.

Mr. Treanor: At this point I must register an objection to Mr. Davis talking about the out-of-pocket costs of the SP&S and the OT on the basis of the foundations laid for his knowledge of this type of information.

I am not pressing the objection as to whether he should be allowed to talk about them generally, but this even goes beyond that, Mr. Examiner. Now he is getting into the costs of these carriers.

By Mr. Farrell:

Q. Mr. Davis, as I understand it, you have been engaged in railway service in the Pacific Northwest, with [fol. 415] the exception of your four years in the Army, since the year 1917.

A. 1918.

Q. And during the four years in the Army what field of work were you engaged in?

A. Transportation.

Q. And what rank did you hold in the Military service?

A. My final rank was Lt. Colonel.

Q. And as such, have you had occasion to become familiar, in the course of your present duties with the operation and costs in a general way in the making of rates and divisions?

A. In a very general way.

Q. And what is the territory with which you are presently responsible for so far as Northern Pacific Railway is concerned?

A. The territory starting at the Idaho-Montana border, and west, with some responsibilities in Montana, also.

Q. And are you responsible within this territory for the Northern Pacific, for the establishment of rates, and also for the establishment of divisions?

A. That is correct.

Mr. Farrell: May the witness continue, Mr. Examiner?

Exam. Wright: I am going to strike that portion of his testimony, which is the first sentence in the last paragraph on page 18, beginning, "The revenue derived," and ending with "to out-of-pocket costs."

[fol. 416] The Witness: Where does that start?

Mr. Farrell: The first sentence, last paragraph, page 18.

Exam. Wright: That is right.

The Witness: Yes.

By Mr. Farrell:

Q. Will you proceed, then, with the second sentence in the last paragraph, page 18.

A. Compensation under the car-haul contract does not vary with the value of the service rendered as is the case with a division of a rate based upon that principle. Consequently, it does not contribute to the revenue needs of the carriers involved to the same extent as would a division of a joint through rate.

It is the position of the Northern Pacific that Commission approval of the rates sought in this complaint would not only discriminate against the Northern Pacific by failure to allow long-haul over lines in which we have common ownership, management and control, but it would also require the Northern Pacific Railway Company, in common with the Great Northern and SP&S Railways, to perform uneconomic, inefficient and wasteful transportation.

The Commission's attention is again invited to the fact that shipper applications, of which there have been a negligible number in the past, have been satisfied and it is the intention of the Northern Pacific Railway Company to continue this practice in the future.

[fol. 417] Q. Mr. Davis, in view of your description of the routes, do you have an opinion as to the effect of routing on traffic in the event these rates are established to common points served by the Great Northern and Northern Pacific Railroad?

A. Yes, our service to Spokane is an illustration which would run up to 48 hours longer than the service of the Great Northern east of Wishram, over the SP&S to Spokane.

Q. Would there be—excuse me, does that complete your answer?

A. Yes.

Q. Would there be any way that our company could equalize that service disability as you see it?

A. There is no way that I know of that we could possibly equalize it because we would still have to haul the cars over this circuitous distance, and that takes time.

Q. What effect would this have upon the choice of routing so far as our handling business into those points?

A. We would have no choice of routing.

Q. No, that isn't my question.

Mr. Farrell: Mr. Reporter, will you read my question?

Exam. Wright: The reporter will read the question.

(Question read.)

By Mr. Farrell:

Q. If that isn't clear, let me state it this way.

In your opinion, Mr. Davis, would the establishment of routes via the inside gateway result in additional business [fol. 418] to our company in view of the service disabilities which you have discussed to these common points?

A. No, I can't see that it would increase our traffic to any extent. It would merely have the effect of dividing the traffic between the two lines, the Southern Pacific and the Western Pacific, and it would have little effect upon our movements.

Q. Now, are the present schedules of Northern Pacific through Portland closely coordinated with the service of the Southern Pacific south of that point?

A. Yes, they are.

Q. And has that been true for some period of years?

A. Yes, it has. Our trains are scheduled to meet with the Southern Pacific service.

Q. Now, turning to Exhibit No. 3, and specifically Table No. 6, which was introduced by the—

Mr. Hobbs: That is Exhibit No. 32.

Mr. Farrell: No, no.

Mr. Hobbs: Oh.

By Mr. Farrell:

Q. —introduced by the Witness Wadsworth, lists the number of stations located upon joint traffic.

Now, what is the effect with respect to the existing joint rates through Bieber of the fact that these stations are located on common trackage with the Great Northern, if you know?

[fol. 419] A. Well, perhaps I should explain something about the joint line for the benefit of the record.

Q. By joint line, what do you mean?

A. Well, I will explain that.

Q. All right.

A. And that will clear up I think some of the points on this Table 6.

If you will refer to my Exhibit 31, what is called the joint line starts at Vancouver, Washington, then extends north through Chehalis and Centralia, to Tenino.

Now, that line is owned by the Northern Pacific Railway, and it has as tenants the Union Pacific and the Great Northern.

Now, at Tenino there is a line branching off to the right, up through Lakeview and Tacoma, and through to Seattle. Now, the Great Northern have rights over that line into Seattle. The line to the left out of Tenino, that goes along the Sound into Tacoma, is joint between the Northern Pacific and Union Pacific.

Now, from Tacoma to Seattle, the Union Pacific operates over a joint line with the Milwaukee. That line parallels the red line of the Northern Pacific.

In the event an industry locates anywhere along that line, as trackage is constructed to serve that industry, the tenant lines are given an opportunity to participate in that traffic. They have the option to buy into it, so to speak, [fol. 420] and I do not know of a case where they have not elected to buy into a track where we have decided to construct a track to serve an industry.

So for all practical purposes, the industries located along the line I have just mentioned are common industries, that is, the industries are common to the three lines, and I will go down Table 6 here and point those out.

There is Auburn, down to and including Christopher.

Q. All stations between?

A. All stations between. Then from Hillhurst, down to and including Meeker, Mobase, through to and including Ostrander, Puyallup, down to and including Rocky Point, Roy, Sumner, Thomas, Vader, through to and including Yelm; all of those stations the Great Northern has full and equal rights to serve industries along with the Northern Pacific and, likewise, where the Union Pacific reaches those stations they have the same equal rights.

Q. Then does the industry located at that point have a full line of joint through rates available via Bieber, in connection with the Great Northern Railroad?

A. Yes, to the extent that the Great Northern has rates via Bieber, they have access to all Great Northern rates and, likewise, they have access to our rates with the Southern Pacific on an equal basis.

Q. Now, is there an important additional station that is [fol. 421] not shown on this list?

A. Yes. Longview was apparently omitted. It is quite an important point.

Q. Now, in view of the fact—

Mr. Treanor: Just a moment, Mr. Farrell.

Mr. Farrell: Excuse me.

Mr. Treanor: I would like to interrupt, just so I understand what your witness has just said, so that I may follow him.

Mr. Farrell: I do want you to follow, Mr. Treanor.

Mr. Treanor: He says that Longview is left off of this exhibit. By that you mean it is a station served by Great Northern, Northern Pacific, Union Pacific, without interchange facilities?

The Witness: Yes.

Mr. Treanor: Thank you.

By Mr. Farrell:

Q. Now—

Mr. Farrell: Thank you, Mr. Treanor.

By Mr. Farrell:

Q. —in view of the fact that these industries at all these points that you have mentioned are located on joint trackage, is there any need for interchange facilities?

A. Absolutely none.

Q. Now, directing your attention to Table 5 of Wadsworth's Exhibit 3, are there some points listed there that [fol. 422] are also located on joint trackage?

A. Yes.

Q. Will you name them?

A. Vancouver, Washington, Chehalis and Centralia, Washington are on the so-called joint tracks, and I might mention that Bend, Oregon has a joint operation by the Grand Northern—by the Great Northern—OT and UP.

Q. And the same remarks you have just made with respect to joint trackage would apply to those points, too?

A. To Vancouver, Chehalis and Centralia it would.

Q. Now, directing your attention to Witness Wadsworth's prepared statement, page 10, the third paragraph on the end, and I will read it—

A. I don't belive I have that with me.

Could I have—

Q. You may have mine.

A. —a copy of it?

Q. And I will ask you to read the third from the last paragraph on page 10 for the record.

A. "Combination of line-haul rates now apply on shipments between inclusive points on complainants in Table 10 of Exhibit 3, and inclusive points on the Northern Pacific or Union Pacific in Table 6 of Exhibit 3."

Q. Do you agree with that statement, Mr. Davis?

A. I do not.

[fol. 423] Q. And why do you not agree with it?

A. Well, the points that I just read off are not exclusive points on the Northern Pacific.

As I mentioned, the Great Northern serves those points in common with the Northern Pacific and, therefore, the shippers have access to Great Northern service and rates.

Q. In other words, as shown on Table 6 of Exhibit 3, the Great Northern serves every single station there listed, as shown by the witness's own exhibit, is that correct?

A. Just a moment, I would like to have that question back.

Mr. Farrell: Read that question, Mr. Reporter, please.

Exam. Wright: The reporter will read the question.

(Question read.)

The Witness: Yes.

By Mr. Farrell:

Q. Now, to your knowledge, Mr. Davis, have you ever refused to publish rates at a shipper's request on canned goods from McHenry, California to Yakima, Washington, via the Tidewater Southern-Western Pacific, Great Northern, Portland, Northern Pacific beyond?

A. To my knowledge I have not, and I heard the witness testify here yesterday to the effect that he had just recently filed that application for such rates.

Q. And by the witness, you mean who?

Mr. Treanor: Mr. Roach.

A. He represented the cannery at McHenry. I have for- [fol. 424] gotten his name.

Mr. Treanor: It was Mr. Roach, if you would like to know.

Mr. Farrell: Mr. Roach, we appreciate your assistance.

By Mr. Farrell:

Q. To your knowledge, have you ever refused a shipper's request for rates on canned goods from Marysville, California, via Western Pacific-Great Northern-Portland-Northern Pacific beyond to Walla Walla, Washington?

A. I do not recall of seeing such an application.

Q. Now, directing your attention to the station at Bellevue, Washington, which we discussed at some length yes-

terday, could you tell us what industries are located at Bellevue, Washington which have a need for rail transportation?

A. Well, the largest industry and practically the only industry at Bellevue of any importance is Safeway Stores. They erected a large distribution plant at Bellevue, Washington, on Northern Pacific rails.

Q. And how was traffic handled to and from that plant within the scope of this complaint from a rate standpoint? What is available there?

A. The traffic of our line is brought into Auburn, and thence moved over to Bellevue, and in connection with the inside gateway the traffic is brought into Seattle where it is turned over to us for furtherance to Bellevue.

Now, Northern Pacific tariff ICC 9801 provides a switching rate on freight, all kinds from Seattle to Bellevue, which [fol. 425] is applicable to traffic on which our connections at Seattle elect to absorb switching.

Now, also, in the same item of the tariff, the same provision for another large grocery house, the American Wholesale Grocers who have or plan on locating on the line going over to Bellevue.

Now, Item 520 of GN-ICC8996 provides for absorption of this switching charge I have just previously mentioned on all traffic originating in California when moving via the Bieber Gateway.

This publication does not distinguish as between competitive or non-competitive traffic. It merely states that the Great Northern will absorb this switching charge.

Q. The absorption is then complete?

A. That is right, without extra cost to the shipper for switching.

* * * * * * *

By Mr. Farrell:

Q. Now, Mr. Davis, directing your attention again to the Witness Wadsworth's Exhibit 3, Table 18, and specifically the second, fourth and fifth shipments listed thereon, which

are all three of them routed Great Northern to Seattle, then—Northern Pacific, and in each case the final destina-
[fol. 426] tion is Bellevue.

Would the Northern Pacific appear as a line-haul carrier in that routing?

A. Well, they should not appear as a line-haul carrier for the reason that I just previously mentioned.

The Great Northern absorbs our switching charge over there, and it is customary to handle shipments on a switching settlement statement rather than on interline billing, and if the consignee paid our local rate over there the tariff of the Great Northern was not complied with which provides for the absorption of our switch.

Q. In other words, if the tariffs were properly applied, the Northern Pacific simply wouldn't appear in that routing, is that correct?

A. That is correct.

Q. Now, turning to Table 12 again of Exhibit 3, and directing your attention specifically to the station Aberdeen, Washington, can you tell me whether or not, despite the caption on that table which is, "Stations located on exclusive NP-UP or their short-line connections, whether or not there are joint through rates via Bieber from the station of Aberdeen, Washington at the present time."

A. There are through rates in connection with the Milwaukee Road and the Bieber route.

Q. With respect to Bellevue, Washington?

[fol. 427] A. Bellevue, I have previously explained that switching charges of the Northern Pacific are absorbed there by the Great Northern.

Q. Bremerton, Washington?

A. Bremerton, Washington is reached via the Bieber route by the inside gateway, and also the Union Pacific, for that matter, in connection with the Bremerton car-ferry which is the common carrier by water, and in the process of being acquired by the Milwaukee road.

Q. Ellensburg, Washington?

A. Ellensburg is a joint station of the Northern Pacific

and Milwaukee, and the inside gateway meets our route there with rates in connection with the Milwaukee.

Q. Hoquiam, Washington?

A. The same statement is applicable.

Mr. Treanor: Excuse me, Mr. Farrell, so I may follow you, isn't that shown on the exhibit what you are asking this witness?

Mr. Farrell: I think the record will speak for itself.

If you are confused—

Mr. Treanor: Yes, I am.

Mr. Farrell: I will make this statement.

On cross-examination of your witness yesterday, I asked your witness if there were not a full line of joint through rates available from this station, and he either did not know [fol. 428] or would not say.

I simply want the record clear on it.

Mr. Treanor: Well, he didn't understand your question.

Mr. Farrell: You may be correct.

Mr. Treanor: The exhibit shows Northern Pacific and Milwaukee, and I am inquiring so I can clearly understand what you are asking this man.

Mr. Farrell: The caption of Table 12 is, and I quote, "Stations located exclusively on NP or UP or their short line connections," and the testimony of your witness was there are not joint rates available via the Bieber Gateway from those stations, and I simply now am showing that there are.

Mr. Treanor: Well, I understand now what you are getting at, but before you—this exhibit does show Milwaukee, doesn't it?

That is all right, I understand.

Exam. Wright: Continue.

By Mr. Farrell:

Q. I believe we were at Hoquiam. I believe you replied to that, did you, Mr. Davis?

A. I did.

Q. Now, Raymond.

A. My statement would be applicable to Raymond. It is served by the Milwaukee.

Q. And Renton?

A. Renton is served by the three lines, the Pacific Coast [fol. 429] Railroad, which is a subsidiary of the Great Northern and wholly owned by that line.

Q. What would you classify that as, short-line connection with the Great Northern?

A. Yes, a short-line subsidiary connection of the Great Northern. As a matter of fact, we make rates into Renton to and from California in connection with the Pacific Coast Railroad. They have a large automobile unloading arrangement setup over there for the handling of automobiles into the terminal area of Seattle, and the traffic of all lines is handled over the Pacific Coast to Renton.

Q. Now, Mr. Davis, have you been in the hearing room since this hearing began at all times?

A. Yes, practically all of the time.

Q. Have you heard all of the shipper witnesses who have testified?

A. Yes, I have.

Q. Have any of these shipper witnesses ever applied to you for any of the rates that they apparently now seek as witnesses for the Western Pacific in this proceeding?

A. I cannot recall receiving an application from any of the witnesses.

Q. If such a request had been made of the Northern Pacific Railroad, would that request come to your attention?

A. It would be processed through my office, and I would [fol. 430] come in personal contact with it.

Q. If such a request had been made of the North Pacific Coast Freight Bureau, would it also come to your attention?

A. It would.

Q. And if such a request had been made of the South Pacific Coast Freight Bureau, would that also come to your attention?

A. It would.

Q. Have any such requests come to your attention from any of these shippers?

A. No.

Q. How many years has the inside gateway been in existence, Mr. Davis?

A. Since 1931.

Q. Did you hear the testimony of the witness Robert Stoll that he needed the service of two routes from the San Joaquin Valley and Bakersfield area to points on the Northern Pacific so that he would have a good car supply available?

A. Yes, I heard Mr. Stoll's testimony.

Q. What is the present rate structure which exists from this area to points in the Pacific Northwest?

A. Well, from the San Joaquin Valley and Bakersfield areas presently joint rates, joint through rates to points on our line via the route of the Southern Pacific to Portland, thence Northern Pacific or via the Santa Fe to Stockton, thence Southern Pacific to Portland and Northern Pacific.

[fol. 431] Q. In other words, he presently has a car supply of both the Santa Fe and Southern Pacific available to him?

A. He would have, yes. They both hold themselves out to perform service from that area.

Q. Is there any further statement you desire to make Mr. Davis?

A. I have none.

Mr. Farrell: I tender the witness for cross-examination.

Exam. Wright: Cross-examination.

Mr. Farrell: And offer these exhibits in evidence.

Exam. Wright: I will withhold ruling until the conclusion of cross-examination.

Cross examination.

By Mr. Treanor:

Q. Mr. Davis, I take it you are the rate legislative man in your railroad in this territory?

A. In this territory, yes.

Q. So you will make the decisions as to whether or not there will be approval of application for rates via the inside gateway in connection with your line?

A. I make decisions up to but not including policy level, but I participate in discussions on matters pertaining to policy.

Q. Well, so we can clearly distinguish that area, is it the policy that governs when the Western Pacific asked for these rates?

A. Are you talking about this case we are involved in here?

Q. Well, and beyond, any time the Western Pacific asked [fol. 432] you to join in these rates with them, is that decided on the policy level rather than by you?

A. Well, that would all depend upon the circumstances surrounding the particular proposal that they might make. Some rates I make in joint committee session with Mr. Amos without referring them to anyone.

Q. You mean our Mr. Amos?

A. Your Mr. Amos. They are made right there at the conference table.

Other rates I might discuss with my superiors in St. Paul.

As I say, it depends upon the circumstances.

Q. Well, who would make the decisions, let us say, on a right—well, I will ask it another way.

Is Mr. Roach's application for the rates going to be approved by the Northern Pacific?

A. Well, I haven't—is that the McHenry application?

Q. Yes.

A. Well, I haven't studied that completely. I wouldn't attempt to conduct a docket meeting here on the witness stand and state whether it would be approved or not. There

are some things that I want to look into and have investigated.

Q. Are the decisions going to be made by your railroad without consultation with the representation of the Southern Pacific?

A. I do not ask the Southern Pacific for authority to make freight rates. I am supposed to be capable of making [fol. 433] my own rate decisions.

Q. Have you discussed this proposition with the Southern Pacific, the proposition that is before you now?

A. McHenry?

Q. No, sir, this case.

A. Yes, I have discussed it with them, certainly I have, but they did not, the Southern Pacific had nothing to do with any statement that I made in my direct testimony.

Q. Didn't you have a meeting with them before this case and decide what you were going to do here?

A. No, we didn't decide what we were going to do here.

Q. Did you have a meeting with them?

A. I had meeting with them, yes, but no decision was reached as to what the Northern Pacific policy would be at that meeting. It was reached far in advance of that meeting.

Q. In other words, for years you have been working with them to keep us out of the business, is that right?

A. No, we have not been working with them to keep you out of the business.

Q. Well, why are you keeping us out of it?

A. Well, we just don't like the route that is proposed in this case. As I explained in my direct testimony, this route fails to recognize a number of things in which we are interested.

Q. Well, how do they affect you?

A. How do they affect us?

[fol. 434] Q. Yes.

A. Well, I thought I made it plain in my direct testimony, one, it would cause us to perform a great deal of added service that we are not required to perform in connection with the Southern Pacific route.

Q. I am sorry, I missed that in your direct testimony.

Mr. Farrell: Complete your answer, Mr. Davis.

A. It fails to recognize, the route sought fails to recognize the fact that we own a part of the OT-SP&S. It is a part of our line, and the proposed route would short-haul us. It fails to recognize the poor service which we feel would be harmful to our company where we compete with the Great Northern.

For instance, at Spokane, with service of the Great Northern being 24 to 48 hours more expeditious than the service would be via the proposed route would cause an unfavorable shipper reaction to our line, in the event a shipper up there required his car.

He might not be responsible for the routing, but if he were displeased with the service he would undoubtedly retaliate and take this business away from us, and perhaps other available business.

Another factor is that our subsidiary line, the SP&S, would be deprived of revenue that it presently receives. There would be a shift of traffic from the Southern Pacific in which the SP&S participates and receives a division [fol. 435] based on the value of the service they render. That traffic would be shifted over, some of it to the inside gateway for handling under the car-haul contract.

Those are some of the reasons that we are not satisfied with the route that is proposed.

Q. Has the SP&S to your knowledge intervened in this proceeding?

A. No, they have not intervened.

Q. So they haven't come to the Commission and stated that they are hurt, have they?

A. They have not, but we have an interest in the SP&S, a proprietary interest, and we feel they would be hurt.

Q. And you are speaking now for the Union Pacific?

A. I am speaking for the Northern Pacific.

Q. I mean the Northern Pacific.

A. For the Northern Pacific, and SP&S, I am speaking for them.

Q. And you are in a position to speak authoritatively for them?

A. I am speaking for the Northern Pacific, as to its attitude with respect to one of its subsidiary lines.

Q. May I then take it that the parent lines of the SP&S would be willing to publish these rates at Wishram?

A. At Wishram, we have no connection with the Oregon Trunk at Wishram.

Q. No, I mean with the Oregon Trunk and the SP&S— [fol. 436] would they be willing to join with you?

A. You mean join with us?

Q. Yes.

A. No, we haven't considered that. We merely dealt with the complaint as presented. If the Western Pacific desires rates via Bend, Oregon Trunk-SP&S, then they should so indicate to us, but they never have done that.

Q. They never asked you for those rates?

A. No, sir, not via that route.

Q. To your knowledge, would you be willing to publish them?

A. Well, I am not going to make freight rates here on the witness stand. That is something that would have to be considered by our management.

Q. Well, you have spoken for management, so I wondered if you might be able to give us the views of management on that point.

A. Yes, I could. My management hasn't considered that possibility because it has never been presented to us.

Q. Now, another question. I would like to know whether the shipper requests that were made here in the hearing room would be honored by your company.

A. Well, I would like to be helpful to you, but I am not going to make freight rates here. There has been no formal application filed, and when we consider a rate matter it is customary to get an application from the shipper stating his reasons.

We investigate it, and handle it in the usual process under [fol. 437] the articles of organization and procedure. Now—

Q. Is this—

A. I will give consideration to any request that is filed. That is the most I can say on that.

Q. And you never make freight rates except by formal application, is that right?

A. Oh, I wouldn't say that, no, but 99 per cent of our rates are handled under formal application, except where one carrier is meeting another carrier or some unusual circumstance.

Mr. Farrell: Just for clarification, have these people presented other requests for other rates, these public witnesses who have been in here?

The Witness: Oh, many, many of them.

Mr. Farrell: So it is not an unusual situation?

The Witness: No, it isn't unusual.

Mr. Farrell: To have a written request?

The Witness: That is correct.

By Mr. Treanor:

Q. You expressed an opinion as to the shipper Stoll's problems.

A. Yes.

Q. You heard him testify that he didn't want to rely on only one line from Northern California into Portland. Did you hear him say that?

A. Well, as I recall his testimony, he was concerned with car supply in Southern California, whatever his testimony [fol. 438] is, why, it speaks for itself; yes.

Q. All right. This wasteful transportation you are talking about, and your fear that the route would take too much time, now today in the absence of the rate that we seek here, there is no opportunity to show how we can compete with the Southern Pacific, is there?

A. Well, we know what the circuity on our own line is, and we know that our service, due to the distance involved, cannot match the route of the Southern Pacific, SP& Northern Pacific through Portland. It is just too lengthy to make that time, and I don't see how under any circumstances that we could meet it, and we certainly could never

meet the time of the Great Northern, for instance, to Spokane or in the area east and south of Spokane.

We couldn't meet their time schedules where they go through Wishram, and east and we would be forced to go through west of Wishram to Portland, and thence up through Auburn. It just would be physically impossible to meet our competition.

Q. Isn't it your experience today, sir, that the overwhelming bulk of the traffic that is given to the railroad is already routed by the shipper when it is tendered to you?

A. Well, I haven't examined bills of lading to determine that. Some shippers specify, for instance, just the origin line; the Southern Pacific on a car, we will say going to Yakima, they may get a bill of lading with just Southern Pacific on it.

[fol. 439] We hope they will give it to us. Sometimes they will specify our routing.

I will say by and large that usually a shipper routes his traffic at the direction of the consignee in some cases.

Q. Well, now, if the shipper can route his traffic, and we must assume he is aware of his right to do that, and the rates are in, and they have proved that the routes are not competitive servicewise, after they are made competitive ratewise, then the shipper can make the decision who he will use, isn't that correct?

A. Well, the shipper will make the decision, certainly, but let us just take a man that, at Spokane for example, assume he gets a car of oranges, routes it out via the Bieber route. He has both of them going to Spokane. One of them would travel east of Wishram up to Spokane, over the Great Northern route, the short route; the other car around through Portland.

If he was in a hurry for the car that was going via our route, it would just be too bad. He would be displeased with our service, and the chances are he would say, "Well, don't give the Northern Pacific any more business."

The Great Northern route is so superior they might take other business away from us.

When the shipper gets mad he is liable to do anything, and one thing that will make him awful mad is poor service.

Q. Or the refusal to give him choice of routes, isn't that [fol. 440] right?

A. Ordinarily he doesn't want circuitous routes. In most cases today people require expeditious service. They work on low inventories, and they want their cars in yesterday.

We have people in our organization that do nothing but run these cars down, endeavor to expedite their movement, and we do not want anyone displeased with any service that we render.

Q. And if these rates go in, you will be able to render it in connection with more than one route, wouldn't you?

A. Well, we would obviously have two routes, yes.

Q. How much traffic moves on class rates today?

A. Well, I would say—

Mr. Farrell: Where, counsel?

Mr. Treanor: The area here he has testified to in his prepared statement, page 8.

Mr. Farrell: Thank you.

The Witness: I have not made a check, and I will grant you my opinion, if that is good enough.

I would say an insignificant amount of traffic moving under class rates.

By Mr. Treanor:

Q. So this route that is so efficient that you are talking about in connection with the class rates just applies in connection with paper rates, isn't that right?

A. That is a fair statement, I would say. However, the reason I included it in there, it reflected the interest of our [fol. 441] company in our subsidiary lines or partially owned lines of the SP&S and Oregon Trunk.

Q. You are interested so long as no traffic moves, is that right?

A. No, not as long as no traffic moves. I just merely stated our interest of why I put it in there.

Q. Now, how about pipe? Now, you testify also on page 8 about rates on iron and steel pipe.

A. That is right.

Q. Now, doesn't that pipe move over the routes that are here sought?

A. Some of it would if it were moving to points on the Northern Pacific.

Q. Yes. Not over the route you have shown for the class rates that don't move any traffic.

A. No, I distinguish between the routing in connection with automobiles and the pipe and the class rates.

Q. Just so we may be clear on this, sir, you understand that we are not asking for any preferential solicitation. We don't, are not asking that. You understand that?

A. Well, as I understand it, the preferential solicitation would be on the other side of the fence, if I read Mr. Wadsworth's testimony correctly.

Mr. Farrell: What do you mean by that, Mr. Davis?

The Witness: Well, Mr. Wadsworth testified as to the [fol. 442] close working arrangement between the sales forces of the Western Pacific, the Great Northern and the Santa Fe, and I take it we would be a rank outsider.

By Mr. Treanor:

Q. Well, that is until your merger took place.

Mr. Burkett: Well, now, I object to that.

Mr. Farrell: I object to that. That is entirely beyond the scope of the issues of this complaint.

Exam. Wright: Sustained.

By Mr. Treanor:

Q. You expressed some concern that the Great Northern —and I don't want to get back on the merger, but I assume you are friendly with the Great Northern. Is that a correct statement?

A. Well, just how do you define friendliness, like the help that Mr. Burkett was trying to give you the other day?

Q. Yes, like a marriage ceremony.

A. Well, we are friendly on a personal basis, but they are still our competitors.

Q. All right. And you do exchange information particularly under today's condition; you have a free exchange of information, don't you?

A. I have absolutely no exchange of information with any employee or officer of the Great Northern Railway except as I might exchange it with your Mr. Amos, or any other railroad representative.

[fol. 443] Nothing pertaining to competitive facts about our business. We are not that close together, I assure you.

Q. All right. Let us talk about this information you are afraid they are going to get. May we assume that the Great Northern is an alert organization and is aware of what shippers are located at common points that you both serve?

A. Oh, I had an experience with that just the other day. Yes, I know how alert they are.

Q. So they know what traffic is available from the common points, don't they?

A. No, not always.

Do you wish an illustration?

Q. I am sure you would love to give it to me.

(Laughter.)

A. Well, I would, yes.

Q. Go ahead.

A. All right. A few days ago I encountered a very unusual movement of traffic. We were shipping automobiles from Renton, Washington, on the Pacific Coast, which is a subsidiary of the Great Northern, to California.

Well, I happened to come into contact with this movement, and we ordered the cars placed into Renton, and the cars hadn't any more than been placed on the subsidiary line of the Great Northern until the freight solicitors of the Great Northern were right on this fellow's tail endeavoring [fol. 444] to get not only the business that we had, but some future business that he had.

So the information pertaining to any movement of traffic is valuable, and I am quite certain that anyone in the sales force of any railroad endeavors to get all of the information they can. I know I did when I was in the business.

Q. And they are working hard at it every day.

A. Yes, sir, they are.

Q. Now, let's go to the exclusive points that you serve. When I say exclusive, I mean exclusive so that the Great Northern is not in there. It doesn't make any difference, does it, in this particular case, whether they get any information on those movements?

A. No, on a car we will say to Yakima, from the standpoint of information, it would not make any difference if the Great Northern had the information, but of course that doesn't mean that we are agreeable to establishing rates to Yakima for that sole reason.

I stated my objections previously to the establishment of the Portland Gateway.

Q. And you of course realize that we gave up on getting you to do it voluntarily, and that is why we are here today.

A. Yes.

Q. And, of course, you do understand that the limitations of the complaint do not handcuff you to go beyond it voluntarily.

[fol. 445] A. No, if we wanted to establish additional rates with the Western Pacific, do you mean?

Q. Yes, sir.

A. Well, I assume that we could if they were agreeable to it, yes.

Q. You or your subsidiaries.

A. Pardon?

Q. You or your subsidiaries.

A. Well, as I previously mentioned, if you have any propositions, we will be glad to look at them.

Q. You will get them.

Now, page 17, Mr. Davis—

A. Yes.

Q. I would like to get into the detail of your statement as to the fact that a certain segment of the SP&S is one of the most costly pieces of railroad, mile for mile.

A. Yes.

Q. Now, you mean to operate?

A. No, its construction. That line when it was built cost approximately a million dollars a mile, which was expensive at that time.

The investment in that part of the line is heavier mile for mile than any other part of their railroad.

Mr. Farrell: What time was this, for the record?

The Witness: Pardon?

[fol. 446] Mr. Farrell: What time was this, for the record?

The Witness: That was back in 1909.

By Mr. Treanor:

Q. So that what you have testified here is that, based on what you have been told, or I assume you have been told by the records of your company, that in 1909 this was one of the most costly pieces of railroad constructed?

A. Yes, and even at today's prices it would be costly at a million dollars a mile.

Q. When is the last time you have dealt with the maintenance of that line, you, Mr. Davis?

A. I have never dealt with any of it.

Mr. Treanor: Thank you. I have completed my cross-examination, sir.

Exam. Wright: Any further cross?

(No response.)

Exam. Wright: Redirect?

Mr. Farrell: One on redirect.

Redirect examination.

By Mr. Farrell:

Q. Mr. Davis, with respect to Mr. Treanor's questions on traffic going to competitive points with the Great Northern, is there a large volume of traffic moving north and

south that are competitive with the Great Northern, such as Seattle?

A. Yes, the whole joint line that I have previously mentioned is highly competitive.

[fol. 447] Again, that is between Vancouver and Seattle. We again encounter competition of the Great Northern north of Seattle at Everett, Sedro Woolley, and Bellingham, and also in the east we encounter their competition at Spokane, east to Sand Point, and south on their line down to Moscow.

Q. Well, would you say then that the principal big and important stations in the state of Washington then are served by both lines, both the Great Northern and the Northern Pacific?

A. Yes, I would say there is more traffic originating or terminating at those stations than—well, perhaps I shouldn't say that. I really don't know, but they are the principal stations in the state of Washington.

Mr. Farrell: Just a moment.

(Short pause.)

By Mr. Farrell:

Q. At the present time—strike that; strike what I have said.

Mr. Farrell: I have nothing further.

Mr. Treanor: I have just one question.

Exam. Wright: Very well.

Recross examination.

By Mr. Treanor:

Q. Then as I understand it, to the points that are common between you and the Great Northern, and the Great Northern's willingness to make rates with you over Portland, hurts them?

A. No, I don't know what you mean by "hurts." It could

[fol. 448] hurt both of us perhaps. It would shorten their haul, obviously.

Q. In other words, they would turn the traffic over to you at Portland instead of taking it all the way up to the common point as they can do today?

A. That is right.

Q. So that you would still have rates between the common point and Portland where you would either turn it over to the Southern Pacific or the Great Northern?

A. That is right but, as I previously stated, we have certain objections to that.

Q. Yes.

A. Yes.

Mr. Treanor: Nothing further.

Further redirect examination.

By Mr. Farrell:

Q. And one of those principal objections, as I understand it, Mr. Davis, is this circuity that would be involved, is that correct?

A. Well, as I stated them, I think there were four.

Exam. Wright: I think that is clear in the record.

Mr. Farrell: All right, I have nothing further.

Offers in Evidence

Exam. Wright: Any objections to Exhibits 30, 31 and 32?

Mr. Treanor: I have none, sir.

Exam. Wright: They are received in evidence.

(Defendants' Exhibits Nos. 30, 31 and 32, Witness Davis, were received in evidence.)

* * * * * * *

[fol. 449] Mr. Burkett: The next witness is presented by the Southern Pacific Company, petitioner and intervenor. Mr. Wascoe, please.

FERDINAND WASCOE was duly sworn and testified as follows:

Exam. Wright: Be seated.

Direct examination.

By Mr. Burkett:

Q. Will you please state your full name?
A. Ferdinand Wascoe, W-a-s-c-o-e.
Q. What is your address?
A. 65 Market Street, San Francisco, California.
Q. By whom are you employed and in what capacity?
A. I am employed as manager of the Bureau of Transportation Research by the Southern Pacific Company.
Q. And are you testifying on behalf of the Southern Pacific Company, intervenor, in this proceeding?
A. Yes, sir.
Q. Would you please state your academic and profes-
[fol. 450] sional background with respect to the railroad industry?

Mr. Treanor: I don't like to deprive him from opportunity of putting it on the record, but I have no question about the fine qualifications of Mr. Wascoe.

Mr. Burkett: Well, thank you very much, Mr. Treanor. I see we are being very gracious today.

By Mr. Burkett:

Q. Mr. Wascoe, have you in the last two years had the occasion to make a detailed study of the transportation conditions of the route of the Southern Pacific Company between Los Angeles, San Francisco, and Portland, Oregon, and also to make a similar study of the transportation conditions of the Santa Fe and Western Pacific between points —I beg your pardon—Santa Fe, Western Pacific and Great Northern on those portions of the line comprising the so-called Bieber route?
A. Yes, sir.

Q. And as a result of those studies, have you prepared an exhibit showing the nature of those transportation conditions?

A. Yes, sir.

Mr. Burkett: Mr. Examiner, I ask that the exhibit which has been distributed and which bears the title, "Transportation Conditions of the Southern Pacific Routes Compared with Western Pacific Route via Bieber, California, between Portland, Oregon and Stockton, California, San Francisco, California and Los Angeles, California," be assigned the next number in order for identification.

[fol. 451] Exam. Wright: That will be No. 33 for identification.

(Intervenors' Exhibit No. 33, Witness Wascoe, was marked for identification.)

Mr. Burkett: What number is it?

Mr. Farrell: No. 33.

By Mr. Burkett:

Q. Has Exhibit No. 33 been prepared by you or under your supervision and direction?

A. Yes, sir.

Q. And is the information presented in Exhibit No. 33 true and correct, to the best of your information and belief?

A. It is.

Q. Is the information presented—does the information presented in Exhibit No. 33 represent the transportation en route referred to as of today?

A. Yes, sir, to the best of my knowledge.

Q. Now, would you please refer to Exhibit No. 1, and would you please hand my copy of Exhibit No. 1 to the witness.

Now, please turn to sheet 1 of your Exhibit No. 33, and would you outline briefly on Exhibit No. 1 the location of the Southern Pacific Company route between Portland, Oregon and Stockton, California, which is referred to in that exhibit?

A. On Exhibit No. 1, the Southern Pacific route is shown in brown.

Starting at Portland, the Southern Pacific proceeds south [fol. 452] to Eugene, thence southeast to Chemult, south again to Klamath Falls, then to Black Butte, which is shown as the junction directly above the station Mount Shasta, through Red Bluff, down to Gerber, California, at which point we have one line operating south to Roseville, another line operating south to Davis.

The route going to Stockton is via Roseville, and then Sacramento, and then directly southward to Stockton.

Q. All right. Now, also referring to that Exhibit No. 1, would you please describe the Western Pacific route via Bieber, between Portland and Stockton, to which you have referred on your Exhibit No. 33?

A. Commencing at Portland, the operation is Great Northern over the SP&S trackage, to Wishram, south from Wishram to Bend on the Oregon Trunk, thence from Bend on the Great Northern to Chemult.

At Chemult, Great Northern operates over Southern Pacific trackage in a joint operation through Klamath Falls down to Bieber. At that point, the Great Northern connects with the Western Pacific which operates southward to Keddie, thence westward and southwestward through or— through Oroville, Marysville and Sacramento to Stockton.

This is indicated by orange for the Great Northern operation, and purple for the Western Pacific operation.

Q. Now, would you please describe on Exhibit No. 1 the [fol. 453] route of Southern Pacific Company between Portland, Oregon and San Francisco, California, to which you have referred in your Exhibit No. 33.

A. As I indicated, there are alternate routes, one via Davis and Oakland, the other via Roseville and Stockton.

Continuing my description, Davis is the junction point due west of Sacramento, as indicated on Exhibit 1. The line commences from there through Vacaville, on across upper San Francisco Bay.

Actually, it is San Pablo Bay into Oakland.

The route via Roseville, which is the junction just due west of the "S" in Sacramento. The train operates through Elvas, which is the eastern part of Sacramento, then south through Stockton, turning west at a junction point of Lathrop, over the Altamont Pass through Niles, Niles Junction, and then across the Dumbarton Bridge into San Francisco.

Q. Now, I notice that on the exhibit you refer to a truck haul with respect to the movement over the route by Davis. Why is that, and between what points is that truck haul rendered?

A. The truck haul would be rendered between our freight station or our piggyback ramp at Oakland, and the ultimate destination in San Francisco, via the San Francisco-Oakland Bay Bridge.

Q. And would that truck haul be used for carload traffic, or less than truckload traffic?

[fol. 454] A. It would be less than truckload, or carload, TOFC traffic.

Q. And by TOFC you mean trailer on flatcar traffic?

A. Trailer on flatcar traffic.

Q. Now, would you describe—

A. I might add one thing further.

Q. Yes, sir.

A. That in handling of automobiles, if there is such a movement on bi-level or tri-level cars, the automobiles themselves would be transferred either on a highway carrier or as units in and of themselves.

Q. Well, now, referring back again to this Exhibit No. 1, would you please briefly give what further information is necessary to describe the Western Pacific route with a Western Pacific termination and a Western Pacific route, with a Santa Fe termination between Portland, Oregon and San Francisco, California?

A. The traffic would be interchanged between the Western Pacific and the Santa Fe at Stockton, thence following the yellow line westward from Stockton through Pittsburg, to Richmond, wherein the carload traffic would be handled by barge into San Francisco; or if it is less than carload or TOFC traffic would be handled over the highway.

Q. Now, would you briefly describe the Western Pacific route when it moves by Western Pacific all the way from Bieber to San Francisco.

[fol. 455] A. From Stockton, the Western Pacific operates south and westward through Lyoth over the same Altamont Pass which Southern Pacific operates through, thence northward at Niles to Oakland.

From Oakland, again the Western Pacific has the option of using barge for carload traffic or truck for LCL or TOFC traffic.

Q. Now, would you please describe on the map constituting Exhibit No. 1 the routes of the Southern Pacific on the one hand via Roseville, and the Western Pacific on the other hand via Bieber, between Portland, Oregon and Los Angeles, California.

A. The route on the Western Pacific to Stockton would be exactly the same as previously described.

At Stockton, the Western Pacific connects with the Santa Fe which handles traffic southward through Turlock and Merced, Fresno, Bakersfield, at which point specifically designated, Kern Junction, they operate on Southern Pacific trackage in a joint operation, Kern Junction and Mojave.

At Mojave, following the yellow line eastward, the Santa Fe handles traffic to Barstow, thence southwestward from Barstow through to Los Angeles.

Q. Now, do you consider that these three different sets of routes which you have shown between Portland, Oregon on the one hand, and Stockton, San Francisco or Los Angeles, [fol. 456] California on the other hand, constitute a showing of the routes over which a substantial amount of the total traffic between California on the one hand and Portland, Oregon on the other hand, would necessarily move?

A. They would be the major routes.

Q. Now, before leaving this map, Mr. Wascoe, I wish you would please refer to this Exhibit No. 31, and although in your descriptions you have indicated routes on Exhibit No. 1, because of the large size, do you have any comments to make concerning the general accuracy of Exhibit No. 1, contrasted with Exhibit No. 31?

A. There isn't really too much difference, except that the map in Exhibit 31 I think is a truer portrayal, the Exhibit 1 being more a schematic diagram of the comparison of the movement between Chemult and Portland, either via the Southern Pacific or the Great Northern operations.

Q. Now, Mr. Wascoe, returning to your Exhibit No. 33, in which you list a comparison of the transportation conditions, would you please explain the significance of the number of interchanges by the various routes which you have there shown?

A. The number of interchanges has significance as a transportation condition for a number of reasons, the major of which are the time consumed in interchange of traffic as between railroads.

Secondly, as to the cost of movement, interchange of [fol. 457] traffic between railroads is a relatively costly operation.

Q. Now, will you please refer to the next Column C, in which you have indicated the number of engine districts by the various routes, and would you please describe the significance of the number of engine districts, and also the significance of the so-called truck and barge movements you have there shown?

A. Yes, sir, these have relationship primarily to cost factors. They are indications of districts over which separate crews handle the traffic involved, and as far as truck and barge operations are concerned I think it is relatively obvious that, in addition to a certain number of specific engine district handlings, when you add a barge operation to a rail operation you have additional switching at the terminal to get the cars on and off the barge, as well as a costly operation of barging.

Q. Now, I assume the column, "Road Miles," which is used for these various routes, is self-explanatory?

A. Yes.

Q. Have you any comments to make concerning the column, "Total Degree of Curvature," which I suppose is also self-explanatory?

A. Total degree of curvature is a summation of, let's say, the amount of zigging and zagging that the traffic would undertake in getting from origin to destination, as indicated on the exhibit.

It has a significance in cost in that there is a relationship [fol. 458] between curvature and the amount of effort or consumption of energy in moving traffic. The relationship there is 4/100ths of a foot of rise is equivalent to one degree of curvature.

Q. Now, would you please briefly describe the feet of rise column, and also explain why the feet of rise is more in one direction in some instances than the other direction?

A. The feet of rise, all this is is the summation of the ascents by milepost of the various routes shown on this exhibit, and it just does indicate relatively how many feet up the traffic has to move.

It ignores any downward movement. That is, it eliminates any downhill.

Q. Now, would you briefly describe the column, "Total Equivalent Rise in Feet," which bears the designation, "G"?

A. The equivalent rise in feet is the evaluation or summation of degrees of curvature, feet of rise, energy effort in moving traffic even while it is moving downward, plus the effect of overcoming internal resistance of the car itself.

Q. And now briefly describe the way you have calculated the figures shown in the column, "Maximum Equivalent Rise in One Mile."

A. The maximum equivalent rise in one mile is just the total feet which includes the degrees of curvature, the feet of rise, for any one mile over the entire route shown. It has some significance in determining the amount of power required.

[fol. 459] Generally, it would give an indication of the ruling grade.

Q. Mr. Wascoe, when I was asking you some questions about these routes on the map, I think I forgot to have you mention the route of the Southern Pacific between Stockton and Los Angeles. That is pretty self-explanatory, isn't it?

A. Yes, sir, the operation is southward from Stockton through Lathrop, Fresno, Bakersfield, Mojave, and I believe Sargus is shown on this map. I can look it up.

Q. I don't think it is.

A. Well, from Mojave the Southern Pacific operates on the brown line directly through to Los Angeles.

Q. And the Santa Fe goes around on the yellow line through to Barstow?

A. Yes, sir.

Q. Now, do you have any comments to make concerning the figures generally shown on Exhibit No. 33 and the underlying pages which follow Sheet No. 1, and would you describe them briefly?

A. Well, in each of the subsequent 16 pages, and—I have in detail for the routes by engine districts, or if a truck or rail barge might be involved the detail by segments which when summed indicate the summary figures shown on sheet 1.

For each of the headings the meanings have exactly the same meaning as described for sheet 1.

Q. Mr. Wascoe, are these transportation conditions which you have shown in your Exhibit No. 33 those which con- [fol. 460] stitute the main transportation conditions with respect to the movement of traffic by various routes?

A. Yes, sir, I would say so.

Q. Now, have you also made an out-of-pocket cost determination of the relative out-of-pocket cost of moving an identical carload of traffic over the Bieber route between Portland and California on the one hand, and the Southern Pacific route between Portland and California on the other hand?

A. Yes, sir. Using Form A, Western District costs I did compute the comparison of the costs from receipt in interchange at Portland by Southern Pacific, or receipt in interchange at Portland by the Great Northern to termination by Southern Pacific at San Francisco and at Los Angeles, versus termination by the Western Pacific at San Francisco or the Santa Fe at Los Angeles.

Q. Would you briefly describe what that form A is, as to which you have just referred?

A. Form A is a cost finding procedure designed and applied by the cost section of the Interstate Commerce Commission. The data which I used was obtained from publication of the cost section in connection with the mileages and the interchanges which have been described in Exhibit 33.

Q. Did this study that you so made take into consideration the differences in total degree of curvature, feet of rise, and total equivalent rise in feet shown in your exhibit?

[fol. 461] A. No, sir, the form A approach does not explicitly take these factors into consideration.

Q. Without taking these factors into consideration, what were the general results of your study?

Mr. Treanor: Just a moment, please.

At this time, Mr. Examiner, I would like to, before making an objection, direct an inquiry as to the foundation of this study, and ask Mr. Burkett, if I may, whether this is the same study that the Transcontinental Lines used in the Division's case.

Mr. Burkett: Maybe, Mr. Treanor, you should be more specific in your question.

Mr. Treanor: No, I mean, is it the same formula, same type of formula that was employed in the Division's case, with the same basic considerations taken into effect?

Now, of course, Mr. Burkett—

Mr. Burkett: I would rather have Mr. Wascoe answer that question which I have no objection to your asking him.

Mr. Treanor: Very well.

The Witness: Yes, basically it started with our obtaining from profiles and maps in Washington on file with the Interstate Commerce Commission the specific elevations and curvatures so indicated.

Subsequently, having these data either confirmed or corrected by operating officers of the Great Northern, the [fol. 462] Northern Pacific—I am sorry—the Great Northern, the Western Pacific, and the Santa Fe, and these are the same factors.

Mr. Treanor: What I am trying to determine, Mr. Examiner, and Mr. Wascoe may have answered it, I want to know, as you and I both know, Mr. Wascoe, one formula is used for one purpose in one case, and maybe there is a slight variation in another, taking into consideration not only what you hope to prove, but what peculiar circumstances apply.

So I am trying to determine when you say—we all know what a form A is, and the Commission is well aware of it, but have you modified Form A here? This is what I am trying to understand.

The Witness: I am sorry, I misunderstood you. I thought you were talking about my Exhibit No. 33 rather than your cost explanation.

Mr. Pfrommer: Your explanation that you have given pertained to the information in Exhibit 33?

The Witness: In Exhibit 33, and I don't think I have answered the question.

Mr. Burkett: Well, if Mr. Treanor would let me proceed I will develop that.

Mr. Treanor: If you would.

Exam. Wright: Very well.

By Mr. Burkett:

Q. Maybe I should go back and ask a preliminary question before I go any further, and that is with respect to [fol. 463] these transportation conditions which you have shown on Exhibit No. 33, what conclusion do you draw concerning the relative favorableness of the transportation conditions of the Southern Pacific route between Portland on the one hand, and Stockton, San Francisco and Los Angeles on the other hand, and the Bieber route between Portland, Oregon and those same points.

Mr. Treanor: I object to that question for the reason that it adds nothing to this record.

Obviously Mr. Wascoe is an ardent Southern Pacific supporter.

Mr. Burkett: Mr. Treanor stipulated to the qualifications of Mr. Wascoe.

Exam. Wright: I will let him answer.

A. Well, for the factors which I have shown in each and every case the Southern Pacific factors are more favorable than the Western Pacific-Bieber route. It varies in some cases where the factors are equal, such as engine districts on the first comparison to other places where there is a difference of 20 per cent.

By Mr. Burkett:

Q. Now, going back to—

Mr. Pfrommer: Mr. Burkett—

Mr. Burkett: Yes, sir.

Mr. Pfrommer: Just to make sure there isn't a nicety in language involved, your question involves the relative favorableness of the routes, and Mr. Wascoe has answered [fol. 464] as to Southern Pacific factors.

Those are the routes.

The Witness: Those are the routes.

Mr. Pfrommer: You are talking about total routes?

The Witness: Yes.

Mr. Burkett: Thank you, Mr. Pfrommer. I think your question sort of clarified the record.

By Mr. Burkett:

Q. Now, would you please state whether this Form A cost study which you used was pure Form A, or whether it made reference to the studies of the adjusted Form A to which Mr. Treanor has referred?

Exam. Wright: You are referring now to the out-of-pocket cost studies?

Mr. Burkett: Yes.

A. The out-of-pocket study was a pure Form A, with adjustments as called for in Form A.

The only adjustments we made were in the number of interchanges and in the mileage. We made no adjustments such as were made in the Division's case.

By Mr. Burkett:

Q. Now, Mr. Wascoe, would you please state the result of this out-of-pocket cost study which you have made?

A. With the two modifications of Form A, as called for by Form A, Portland to San Francisco via Southern Pacific, that is compared with Portland to San Francisco via the [fol. 465] Western Pacific, the Western Pacific out-of-pocket costs were 15 per cent higher.

Portland to Los Angeles, via the Bieber route, versus Portland to Los Angeles via the Southern Pacific route, was 25 per cent higher, and this is as I explained without modification of costs as would occur if some of the factors which are shown on 33 are taken into account.

Q. Now, supposing those other factors on Exhibit No. 33 were taken into account. Would it result in a greater or less difference between the Bieber route out-of-pocket cost and the Southern Pacific route out-of-pocket cost?

A. If these factors were taken into account, there would be a greater difference.

Q. Now, Mr. Wascoe, have you prepared an exhibit showing relative schedules from Portland, Oregon on the one hand, and various points in California on the other hand, by these respective routes?

A. Yes, sir.

Mr. Burkett: Mr. Examiner, I ask that this one-sheet exhibit which has just been distributed be marked No. 34 for identification.

Exam. Wright: It is so marked.

(Intervenors' Exhibit No. 34, Witness Wascoe, was marked for identification.)

By Mr. Burkett:

Q. Mr. Wascoe, will you please briefly describe Exhibit [fol. 466] No. 34?

A. Exhibit No. 34, freight train schedules, Southern Pacific routes compared with Western Pacific-Bieber route, these schedules were taken from the published timetables of Southern Pacific and Western Pacific.

It indicates, in addition to leaving and arrival times at the points involved, the elapsed times between such points.

Q. And these schedules are limited to the service out of Portland?

A. Yes, sir.

Q. Now, would you briefly please describe the different routes over which the Southern Pacific trains you have shown on your Exhibit No. 34 might operate and the significance of those trains?

A. The BAS, the Bay Area Special, shown as the first southbound train operating to Oakland and San Francisco operates over the route I have described to Gerber, and then south on what we call the West Valley line to Davis, from Davis to Oakland, and then around the Bay from Oakland to San Francisco.

PCW-377 operates through Gerber, again down through Davis into Oakland.

The PNL operates over the East Valley Line through Roseville, Stockton, Fresno, Bakersfield, to Los Angeles.

The ADV. SMW-CS, operates through Roseville, then the CS operates from Roseville through Sacramento to [fol. 467] Oakland, and from Oakland to San Francisco, around the Bay.

Mr. Pfrommer: By what route is that?

The Witness: Through Roseville and Oakland.

Mr. Pfrommer: From Sacramento to Oakland via what route?

The Witness: Through the main line, through Roseville and Oakland, not via Stockton.

Mr. Pfrommer: You are operating up through Martinez on that route?

The Witness: That is correct.

By Mr. Burkett:

Q. Now, what is the significance of the symbol 012 or 3, which follow the times you have set forth in your schedule Exhibit No. 34?

A. Those are the days. If a car is loaded on a Monday, for instance, 5:00 a.m. Tuesday would be day one; it would be 5:00 a.m. day one.

Q. Do you have any comments to make concerning your Exhibit No. 34, any other comments?

A. I don't think I have described each route, but there are schedules going both via Davis, via Roseville to the San Francisco Bay Area.

Q. Well, would you like to briefly describe those routes?

A. PNL goes directly to Los Angeles via Roseville, Stockton, Fresno, Bakersfield; TFC SPECIAL, also.

On the northbound schedules, the Starpacer and the NCP, and the VXW, all operate via Stockton-Roseville.

[fol. 468] PCE, that is 378 PCE, operates via Davis over the West Valley Line; the OVE out of San Francisco operates over Altamont Pass; that is, through Stockton.

The SME, operating out of Oakland, operates through Martinez and Davis to Roseville.

Q. Do you have any other comments on Exhibit 34?

A. No, sir.

Q. Mr. Wascoe, would you please state what the type of rail is on the route of the Southern Pacific Company between California and Portland?

A. For the most part, the rail used on all of the trackage involved in our main lines, which would include these routes, are 112, 113, 132 and 136-pound rail.

The 112 and 113-pound rail is used only on tangent track. The heavier rail is used on curves, and a significant part of our mileage is in the heavier rail.

There is a little 119-pound rail, also.

Q. Now, would you also please describe what block signals or centralized traffic control there is on the route of Southern Pacific, between those points?

A. Between Oakland and Davis, the Southern Pacific

route is double-track automatic block signal with some segments of automatic train stop.

Davis to Gerber, up the west side line, is single-track automatic block signal.

[fol. 469] Gerber to Redding is single-track automatic block signal.

Redding to Black Butte is single-track centralized traffic control.

Black Butte to Klamath Falls is automatic block signal and single-track automatic block.

Klamath Falls to Crescent Lake is single-track centralized traffic control.

Crescent Lake to Eugene is single-track centralized traffic control.

Eugene to Brooklyn is centralized traffic control, automatic block signal.

Q. Mr. Wascoe, I don't think we have in the record yet the location of these points to which you have referred, and let us look at Exhibit No. 1 where I think most of those points are located.

A. I thought I did point out where the locations of the major part of them were.

Q. Well, if you feel it is in the record we won't take any more time with it.

You did identify all those points?

A. I did identify Davis, Gerber as the junction just south of Red Bluff, Klamath Falls is here, Black Butte was identified as a junction north of Mount Shasta.

Crescent Lake is roughly on the Southern Pacific Lines between Eugene and Chemult right about where the "P" is [fol. 470] indicated.

I think all of those points that I just mentioned are then identified.

Q. Now, then, going back to your Exhibit No. 34 for a moment, are the schedules you there show identifical with the schedules south of Portland shown by Mr. Evers in his Exhibit Nos. 28 and 29?

A. Yes, sir.

Q. Now, have you also made a compilation of the gross ton miles trailing by the Southern Pacific Company between Gerber and Dunsmuir?

A. Yes, sir.

Mr. Burkett: May this one-sheet exhibit which has been distributed be assigned the next number in order for identification?

Exam. Wright: No. 35 for identification.

(Intervenors' Exhibit No. 35, Witness Wascoe, was marked for identification.)

By Mr. Burkett:

Q. Mr. Wascoe, why did you choose the segment between Gerber and Dunsmuir to use on this exhibit?

A. This was to pick a section of track which would be directly comparable to the Keddie-Bieber segment of the data that Witness Allen put in Exhibit 22.

Q. And would all of the traffic of Southern Pacific Company moving between California on the one hand and Port- [fol. 471] land, Oregon on the other hand, necessarily have to go over this particular segment of track?

A. Yes, sir.

Q. All right. Now, would you briefly describe Exhibit 35 and state any conclusions you care to draw therefrom?

A. It shows for the comparable years the gross ton miles trailing and total east and west handled between Gerber and Dunsmuir for the years '43, '44, '45, '46, '58, '59 and '60.

My conclusion is that if you look at the year 1944 and compare it with 1960, there is an indication of excess capacity such as was indicated by Mr. Allen when he described his Exhibit No. 22.

Q. And in addition, is it a fact that since 1944 certain improvements, such as extension of centralized traffic control, have been made by Southern Pacific on this route?

A. Yes, sir, many improvements have been made in signalling and in upgrading the quality of the rail.

Q. So today would the capacity of this line be necessarily greater than it was in 1944?

A. Yes, sir.

Mr. Burkett: That completes my examination of Mr. Wascoe.

Exam. Wright: We will take a short recess.

(Short recess.)

Exam. Wright: Come to order, please.

Mr. Burkett: I would like to ask Mr. Wascoe one addi-
[fol. 472] tional question and that is:

By Mr. Burkett:

Q. Mr. Wascoe, since 1944, has Southern Pacific Company substantially added to its ownership of freight cars and its ownership of locomotive power?

A. As to freight cars, yes. As to locomotive power, I think I could best state it that we have converted from a steam operation to a diesel operation, a 100 per cent diesel operation which increases the capacity to handle traffic.

Mr. Pfrommer: You said one.

(Laughter.)

Mr. Burkett: I was just ready to say, Mr. Pfrommer, that I had finished my further direct examination.

Mr. Pfrommer: Good.

Exam. Wright: Cross-examination.

Cross examination.

By Mr. Treanor:

Q. Mr. Wascoe, your department frequently puts in cost testimony in many different types of cases, including a case such as this, a competitive rate situation, a maximum reasonable rate—

A. Yes.

Q. And that type of thing, is that right, sir?
A. Yes, sir.

Mr. Burkett: Now, would you please read that question, please?

Exam. Wright: The reporter will read the question.
[fol. 473] The answer is already in the record.

Mr. Burkett: Mr. Treanor, did you mean minimum reasonable rates or maximum reasonable rates?

Mr. Treanor: I didn't intend to limit it to any particular kind. I use those as examples.

Mr. Burkett: I think you and I agree that there is no maximum reasonable rates, because in the past you and I have taken the position that such was entirely irrelevant.

By Mr. Treanor:

Q. Minimum reasonable rates, Mr. Wascoe?
A. Yes, sir.
Q. Do you also use the same cost study?
A. No, sir, and if I may explain, where we or our compatriots, that is, the railroads joining us have the basic data in a form which is designated—I don't remember our own formula. Essentially, the Southern Pacific costing formula, we do put in our own.

Where there are other railroads involved who do not have the basic data in such a form, we do not use our approach mainly because of the time factor of the developing of the basic information, and then we do use Form A modified, and adjusted, as called for by the instructions.

Q. Now, in competitive rate cases, this is where your rates are reduced, the railroad rates are reduced?
A. We have used both.
Q. Thank you.

[fol. 474] Mr. Burkett: One was the canned goods case. Do you remember?

Mr. Treanor: I will never forget it. Neither will the reporter.

By Mr. Treanor:

Q. The 20 per cent circuity that you are talking about, the Southern Pacific route as opposed to our route, ours being you say approximately 20 per cent more circuitous?

A. I didn't say 20 per cent.

Q. What did you say?

A. I say that some of these factors could vary from equal up to 20 per cent.

Q. The exhibit—you prepared Exhibit No. 33 and the comparison of the Western Pacific Route; now, at the California point you have chosen for the Western Pacific Route, you mean there of course the City of San Francisco; you don't mean the San Francisco Bay Area.

A. No, sir, this is the city. It involves the barge haul, and Western Pacific serves on the West Bay or West Shore of the Bay only.

Q. And they serve numerous points on the East Bay of San Francisco?

A. Yes, sir.

Q. In the San Francisco Bay Area?

A. Yes, sir.

[fol. 475] Q. And then on those moves, of course, there would be no barge operation at all?

A. On those moves, there wouldn't, but San Francisco, Stockton and Los Angeles are major points of traffic origination or termination.

Q. Yes. I realize that, but the point I wanted to establish was that all of our traffic into the Bay Area does not have to be barged unless it is going to or coming from San Francisco, the city?

A. That is correct, or Alameda.

Q. Mr. Wascoe, I, of course, don't want you to answer this question unless you know the answer.

Mr. Burkett: I assure you he will not.

Mr. Farrell: That is a good horse.

By Mr. Treanor:

Q. If we are such an insignificant, inefficient organization, why is your company trying so hard to keep us from being competitive on the rates?

Mr. Burkett: Objection.
Exam. Wright: I will sustain the objection.
Mr. Treanor: That is all I have, sir.
Mr. Pfrommer: I have—just a minute.
Exam. Wright: Mr. Pfrommer?

By Mr. Pfrommer:

Q. I just want to ask on Sheet 1 of Exhibit 33, Mr. Wascoe, where you show San Francisco to Portland, Southern Pacific route via Stockton-Roseville, and Southern [fol. 476] Pacific route via Oakland, I am still not clear when you say via Stockton and Roseville.

Does that mean that the traffic then, your mileages, your engine districts and everything are figured via Altamont Pass?

A. The one via Roseville-Stockton are via Altamont Pass; the one via Davis is via Davis-Martinez-Oakland.

Q. And that is used only in connection with the traffic that can be trucked over the bridge?

A. Not for Oakland.

Mr. Burkett: Now, will you read that question, please?
Exam. Wright: The reporter will read the question.

(Question read.)

Mr. Burkett: You mean the route by way of Davis rather than the Altamont Pass, don't you, Mr. Pfrommer?

Mr. Pfrommer: The heading doesn't say anything about Oakland. It says San Francisco to Portland. If it means the City of San Francisco, it has to cross water.

By Mr. Pfrommer:

Q. Do you mean the San Francisco Bay Area there in the heading?

A. No, I meant San Francisco. The traffic could come via Oakland around the Bay.

Q. Around the Dumbarton Bridge?

A. That is right. That is 60 miles, so you might have 60 more miles.

Q. What is actually on the second line under the heading, [fol. 477] "San Francisco to Portland," what have you actually figured there? What do you actually show into the City of San Francisco?

A. That really was just to show the movement of either LCL or TOFC traffic which is moved into Oakland.

Q. Are those figures—

A. And then handled by truck over to San Francisco.

Q. And that is all?

A. That is all. There is no carload traffic going by truck that is under Southern Pacific billing.

Mr. Pfrommer: All right, thank you.

Redirect examination.

By Mr. Burkett:

Q. Mr. Wascoe, does the Southern Pacific route via Roseville, California, Stockton, California, include a movement over Altamont Pass?

A. Yes.

Q. Does it include a movement across Dumbarton Bridge?

A. Yes.

Q. And is it an all-rail movement between Portland and San Francisco proper?

A. Yes.

Q. All right. Now, supposing we did want to draw a comparison of the transportation conditions of these respective routes between Oakland, California, and Portland, Oregon. Could we do that by looking at lines 2, 3 and 4 of the head- [fol. 478] ing between Portland and San Francisco, and merely disregarding the truck and barge movements across the Bay?

A. Yes.

Q. That is the distance—

A. Except for the miles. The Southern Pacific truck miles are ten miles, as indicated on—11 miles, I am sorry, indicated on Sheet 7.

The Western Pacific barge miles are five, as indicated on Sheet 8, and the Santa Fe miles from Richmond are ten.

Q. Then we could get the mileages merely by deducting these mileages to which you have referred from the 732, the 880, and the 866 miles shown on your exhibit?

A. That is correct.

Q. Yes. And now what would the degrees of curvature be between Oakland and Portland?

A. There would be no change.

Q. And how about the feet of rise?

A. No change.

Q. And how about the material appearing in Columns F, G and H?

A. No change.

Mr. Burkett: Thank you, sir.

The Witness: These are just the rail movement, the degrees of curvature and feet of rise and equivalent rise.

Exam. Wright: Does that conclude your redirect?

[fol. 479] Mr. Burkett: Yes, sir.

Exam. Wright: Any recross?

Mr. Treanor: No.

Offers in Evidence

Mr. Burkett: I offer in evidence Exhibits Nos. 33, 34 and 35.

Exam. Wright. Any objections?

Mr. Treanor: No, sir.

Exam. Wright: Exhibits 33, 34 and 35 are received in evidence.

(Intervenors' Exhibits Nos. 33, 34 and 35, Witness Wascoe, were received in evidence.)

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[fol. 481] Secretary's certificate to exhibits (omitted in printing).

EXHIBIT No. 1
I.C.C. Docket No. 33679

[fol. 482]

BEFORE THE INTERSTATE COMMERCE COMMISSION

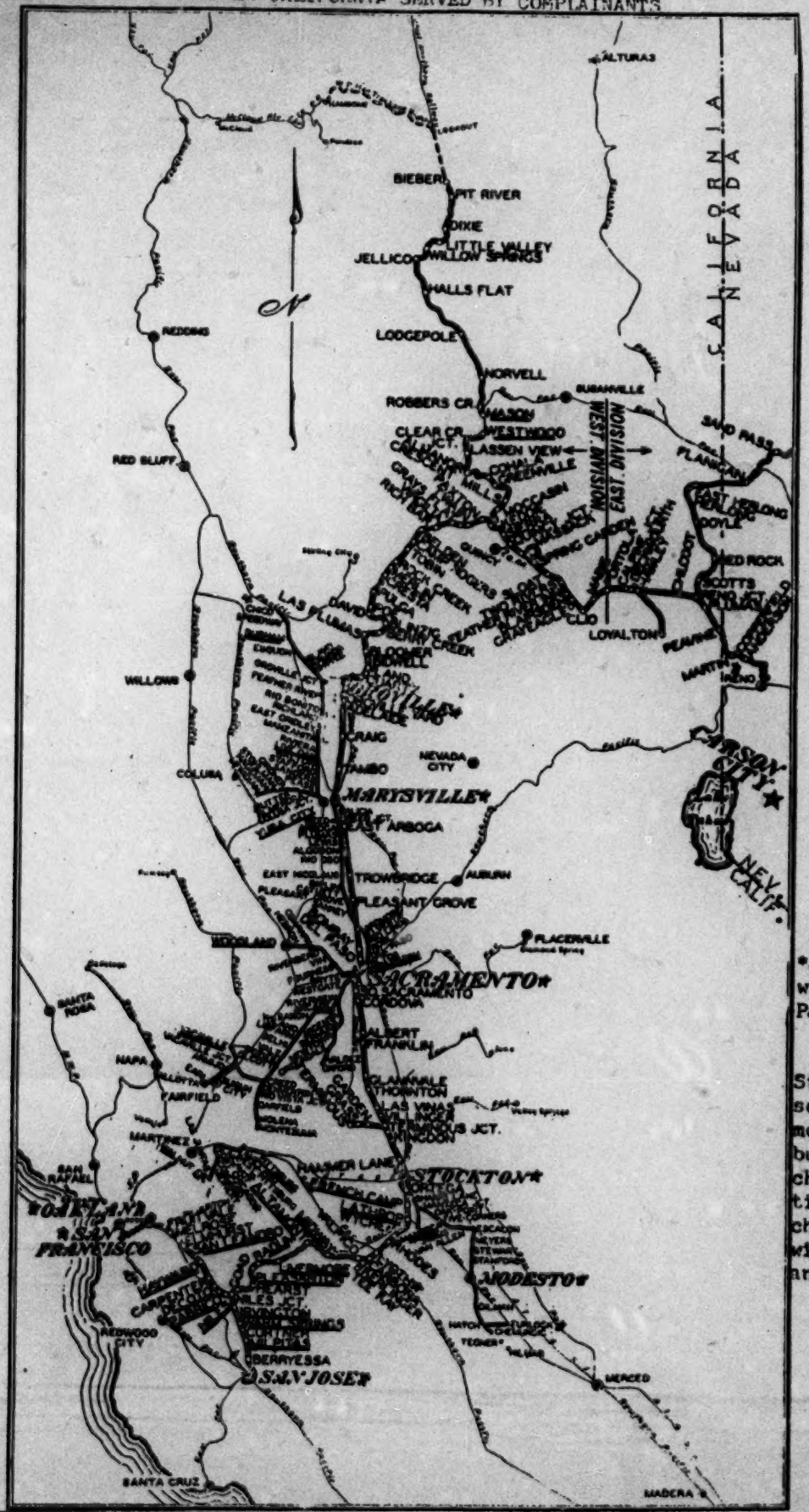
EXHIBIT No. 1

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 2

[fol. 483]

POINTS IN CALIFORNIA SERVED BY COMPLAINANTS



*Junction point with Southern Pacific Company.

Stations underscored are common with SP Co. but lack interchange facilities to interchange freight with complainants'.

[fol. 484]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 3

Tables of Statistical and Other Data Referred to by Witness Wadsworth's Prepared Statement.

Table 1
Miles of line operated by complainants in California

Line	Miles of line operated
SN	338
TS	57
WP	592
Total	987

Table 2
Representative cities in California served by complainants

City	Population 1950	Population 1960	City	Population 1950	Population 1960
San Francisco	775,357	740,316	Modesto	17,389	36,585
Oakland	384,575	367,548	Turlock	6,235	9,116
Alameda	64,430	63,855	Sacramento	137,572	191,667
Hayward	14,272	72,700	Marysville	7,826	9,553
San Jose	95,280	204,196	Yuba City	7,861	11,507
Stockton	70,853	86,321	Oroville	5,387	6,115
Walnut Creek	2,420	9,903	Chico	12,272	14,757
Concord	6,963	36,208			

Table 3
Tariffs containing rates between California and Oregon-Washington and Northern Idaho.

PSFB Tariff Number	ICC Number	Tariff contains rates on
1-S	1352	Miscellaneous commodities
60-M	1420	Fresh fruits and vegetables
80-I	1536	Lumber and Forest Products
241-E	1577	Grain and Grain Products
295-D	1677	TOFC rates on Miscellaneous Commodities
297-D	1678	TOFC rates on Automobiles
1016	1590	Class rates

[fol. 486]

Table 4
Present routes via Bieber

Between points on	And points on	Rates apply via
1. WP	GN	WP-Bieber-GN
2. SN	GN	SN-Sacramento or Marysville-thence WP-Bieber-GN
3. TS	GN	TS-Stockton-thence WP-Bieber-GN
4. AT&SF	GN	ATSF-Stockton thence WP-Bieber-GN

Table 5

Interchange points between GN-NP and GN-UP	
Portland, Oregon	GN and NP, GN and UP
Vancouver, Wash.	GN and NP, GN and UP
Chehalis, Wash.	GN and NP
Centralia, Wash.	GN and NP, GN and UP
Tacoma, Wash.	GN and NP, GN and UP
Seattle, Wash.	GN and NP, GN and UP
Everett, Wash.	GN and NP
Sedro Wooley, Wash.	GN and NP
Bellingham, Wash.	GN and NP
Adrian, Wash.	GN and NP
Spokane, Wash.	GN and NP, GN and UP
Sand Point, Idaho	GN and NP
Oakesdale, Wash.	GN and UP
Atlas, Idaho	GN and NP
Coeur d'Alene, Idaho	GN and NP
Palouse, Wash.	GN and NP
Moscow, Idaho	GN and NP, GN and UP
Bend, Oregon	GN and UP

Table 6

Stations served by GN-NP-UP without interchange facilities

Adrian, Wash..... GN-NP	*Ostrander, Wash.....GN-NP-UP
Argo, Wash..... GN-UP	Parkwater, Wash.....GN-NP
Auburn, Wash..... GN-UP-NP	Puyallup, Wash.....GN-NP-UP
Bucoda, Wash..... GN-UP-NP	Rainier, Wash.....GN-NP
*Castle Rock, Wash... GN-UP-NP	Reservation, Wash.....GN-NP
Christopher, Wash... GN-NP	Rhodes, Wash.....GN-NP
Colfax, Wash..... GN-UP	*Ridgefield, Wash.....GN-NP-UP
Dishman, Wash..... GN-UP	*Rocky Point, Wash.....GN-NP-UP
Garfield, Wash..... GN-UP-NP	Rosalia, Wash.....GN-NP
Hillhurst, Wash..... GN-NP	Roy, Wash.....GN-NP
*Kalama, Wash..... GN-NP-UP	Snohomish, Wash.....GN-NP
*Kelso, Wash..... GN-NP-UP	Sumner, Wash.....GN-NP-UP
Kent, Wash..... GN-NP-UP	Thomas, Wash.....GN-NP-UP
Lakeview, Wash..... GN-NP	Thornton, Wash.....GN-UP
Lowell, Wash..... GN-NP	*Vader, Wash.....GN-NP-UP
McChord Field, Wash. GN-NP	Wabash, Wash.....GN-NP-UP
Meeker, Wash..... GN-NP	Wetico, Wash.....GN-NP
Millwood, Wash..... GN-NP	*Winlock, Wash.....GN-NP-UP
Mobase, Wash..... GN-NP	*Woodland, Wash.....GN-NP-UP
*Napavine, Wash..... GN-NP-UP	Yelm, Wash.....GN-NP
*Olequa, Wash..... GN-NP-UP	Gibbs, Idaho.....GN-NP
	Huetter, Idaho.....GN-NP
	Post Falls, Idaho.....GN-NP

*located on joint track

[fol. 488]

Table 7

Between	And	Applicable Charges
1. NP or UP points common with GN and having interchange with GN per Table 5.	Points on complainants which are common with SP per Tables 8 and 9	Thru rates via Bieber-GN plus switching charges of NP or UP, which GN absorbs.
	All other points on complainants	Thru rates via Bieber-GN plus switching charges of NP or UP which GN does not absorb.
2. NP or UP points common with GN but having no interchanges with GN per Table 6.	Complainants' points common with SP and having interchanges with SP per Table 8	Thru rates via SP thru Portland thence NP or UP, plus switching charges of complainants which SP absorbs.
	All other points on complainants	Combination of line haul rates.
3. All other points on NP and UP such as shown by Table 1/	Complainants' points common with SP and having interchanges with SP per Table 8	Thru rates via SP thru Portland thence NP or UP, plus switching charges of complainants which SP does not absorb.
	All other points on complainants	Combination of line-haul rates.

Table 8
Interchange points between complainants and SP

Station	Interchange Between	and	Station	Interchange Between	and
San Francisco	WP	SP	Stockton	WP	SP
Oakland	WP	SP	Stockton	TS	SP
San Jose	WP	SP	Modesto	TS	SP
Lyoth	WP	SP	Turlock	TS	SP
Las Juntas	SN	SP	Sacramento	WP	SP
McAvoy	SN	SP	Sacramento	SN	SP
Port Chicago	SN	SP	Marysville	WP	SP
Chico	SN	SP	Marysville	SN	SP
			Oroville	WP	SP

Table 9
Common points between complainants and SP but without interchange facilities

Station	Served by	Station	Served by
Concord	SN,SP	French Camp	WP,SP
Walnut Creek	SN,SP	Manteca	TS,SP
Hayward	WP,SP	Pittsburg	SN,SP
San Leandro	WP,SP	Vacaville	SN,SP
Decoto	WP,SP	Woodland	SN,SP
Fabrico	WP,SP	Swanston	SN,SP
Fremont (Niles)	WP,SP	Yuba City	SN,SP
Irvington	WP,SP	Live Oak	SN,SP
Warm Springs	WP,SP	Durham	SN,SP
Milpitas	WP,SP	Mason	WP,SP
Pleasanton	WP,SP	Westwood	WP,SP
Livermore	WP,SP	Herlong	WP,SP
Lathrop	WP,SP		

Table 10
Representative stations served only by complainants

Station	Served by	Station	Served by
Chadbourne	SN	Portola	WP
Chemurgic	TS	Reed	SN
Clarksburg	SN	Rhodes	WP
Crescent Mills	WP	Simms	TS
Curtner	WP	Sloat	WP
East Nicolaus	WP	Sorroca	SN
Grass	WP	Sutter	SN

(continued on following page)

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Table 10 continued

Station	Served by	Station	Served by
Greenville	WP	Terminous	WP
Loyalton	WP	Thornton	WP
McHenry	TS	Villinger	WP
Oxford	SN	Willotta	SN

Table 11

Representative unabsorbed switching charges of NP and UP, applicable to shipments moving via Bieber from or to points served exclusively by complainants.

Station	UP		NP	
	Charges	Tariff	Charges	Tariff
Spokane, Wash.	$9.20 or $14.95 per car depending upon switching zone	UP 9001-D, ICC 5457 item 480	$9.20 per	NP 1605-K, ICC 9912 Item 70
Seattle, Wash.	$9.20 per car	Same as above, but in item 420	From $4.61 to $34.48 per car, depending upon switching zone	NP 333-B, ICC 9801 Item 110
Tacoma, Wash.	$8.06 or $9.20 per car depending upon zone	same as above, but in item 535-B	from $6.81 to $24.15 per car depending upon weight and zone	NP 3425-G, ICC 9803 Items 110, 115, 120
Various other stations in Oregon, Washington and Idaho	(1) 76¢ per net ton, minimum $17.49 per car	same as above, but in item 170	$20.81 per car	NP 91-M, ICC 9804 Item 310
	(2) $17.76 per car	same as above, but in item 175		

(1) Applies at Moscow, Idaho and Oakesdale, Washington

(2) Applies at Centralia, Washington

Table 12
Stations located exclusively on NP or UP or their short line connections

Station	Population 1950	Population 1960
Idaho:		
Grangeville,CP	2,544	3,642
Kellogg-Wardner	4,913	5,061
Lewiston,NP,CP	12,985	12,691
Wallace,NP,UP	3,140	2,412
Oregon:		
Baker,UP	9,471	9,986
Hermiston,UP	3,804	4,402
Milton-Freewater WWV,UP	....	4,110
Pendleton,UP,NP	11,774	14,434
The Dalles,UP	7,676	10,493
Washington:		
Aberdeen,NP,UP, M	19,653	18,741
Bellevue,NP	10,002	12,809
Bremerton,NP	27,678	28,922
Dayton, NP,UP	2,979	2,913
Ellensburg,NP,M	8,430	8,625
Hoquiam,NP,UP,M	11,123	10,762
Kirkland,NP	4,713	6,025
Medical Lake,NP	4,488	4,765
Olympia,NP,UP	15,819	18,273
Pullman,NP,UP	12,022	12,957
Raymond,NP,M	4,110	3,301
Renton,NP,M,P	16,039	18,453
Richland,NP,UP	....	23,548
Shelton,NP	5,045	5,651
Sunnyside,NP,UP	4,194	6,208
Toppenish,NP	5,265	5,667
Walla Walla, NP, UP,WWV	24,102	24,536
Wapato,NP	3,185	3,127
Yakima,NP,UP	38,486	43,284

Sources of population statistics: U.S. Department of Commerce, Bureau of the Census, reports for the states shown in Table 12.

M: Chicago, Milwaukee, St. Paul & Pacific RR.
CP: Camas Prairie RR
P: Pacific Coast RR
WWV: Walla Walla Valley RR.

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Table 13
Tariffs containing complainants' switching charges

Tariff issued by	Tariff number	ICC number	Item number
WP	35-J	248	460
SN	5-C	47	670
TS	5-F	54	260 and 300

Table 14
Shipments via Santa Fe between California and Oregon-Washington

Year	Via Bieber	In Connection with SP	Excess via Bieber
1955	34,077	7,084	26,993
1956	32,003	9,050	24,953
1957	28,704	6,476	22,228
1958	28,655	5,479	23,176
1959	31,471	8,043	23,428
5-Year Average	30,982	7,226	23,756

Table 15
Potential traffic via Bieber to or from NP or UP and originating or terminating on Santa Fe

Year	Carloads		
	Northbound	Southbound	Total
1955	2,961	4,123	7,084
1956	3,926	5,124	9,050
1957	2,820	3,656	6,476
1958	2,568	2,911	5,479
1959	2,783	5,260	8,043
5-Year Average	3,012	4,215	7,226

Table 16
Traffic shipped via Bieber to or from points on NP and UP
(other than cast iron pipe)

Kinds of traffic	Carloads	
	1959	1960
Government traffic	3	5
Commercial traffic	16	6
Total	19	11

Table 17
Government shipments to NP and UP points via Bieber
(to Fort Lewis, Washington)

Commodity	Year	Cars	From	Routes
Explosives	1959	1	Herpoco	AT&SF-Stockton-WP-Bieber-GN-Portland-NP
Generators		1	Lathrop	WP-Bieber-GN-Spokane-NP
Misc. Mdse.		1	Lyoth	WP-Bieber-GN-Tacoma-NP
Misc. Mdse.	1960	2	Lyoth	WP-Bieber-GN-Tacoma-NP
Medical Stores		1	Lyoth	WP-Bieber-GN-Portland-NP
Canned Goods		1	Lyoth	WP-Bieber-GN-Bend-UP
Canned Goods		1	Lyoth	WP-Bieber-GN-Tacoma-NP

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Table 18
Commercial shipments to or from NP and UP points
via Bieber in 1959 and 1960

Commodity	From	To	Route
1959			
Furniture	Inglewood	Spokane, Wash.	AT&SF-WP-GN-Seattle-NP
Soap	Los Angeles	Bellevue	AT&SF-WP-GN-Seattle-NP
Cereals	Oakland	Bellevue	WP-GN-Portland-NP
Celery	San Jose	Bellevue	WP-GN-Seattle-NP
Canned Goods	Oakland	Bellevue	WP-GN-Seattle-NP
Tomatoes	Yuba City	Bellevue	SN-WP-GN-Portland-NP
Potatoes	Shafter	Olympia	AT&SF-WP-GN-Portland-NP
Steel Plates	Kaiser	Fir, Oregon	AT&SF-WP-GN-Portland-UP
Cans	San Francisco	Fir	AT&SF-WP-GN-Portland-UP
Anti-freeze	Torrance	Bothell, Wash.	AT&SF-WP-GN-Seattle-NP
Cathode ray tubes	Fullerton	Seattle	AT&SF-WP-GN-Portland-NP
Scrap tires	Seattle	Los Angeles	UP-Portland-GN-WP-AT&SF
Scrap iron	Kennewick	Decoto	NP-Portland-GN-WP
Scrap iron	Yakima	Decoto	NP-Portland-GN-WP
Scrap iron	Lewiston, Idaho	Decoto	UP-Portland-GN-WP
Potatoes	Connell, Wash.	Hayward	UP-Portland-GN-WP
1960			
Metal Conduits	San Leandro Calif.	Olympia, Wash.	WP-GN-Portland-UP
Tanks	Stockton	Woodinville	WP-GN-Seattle-NP
Scrap iron	San Francisco	Troutdale, Ore.	WP-GN-Portland-UP
Pulpboard	Antioch	Wallula, Wash.	AT&SF-WP-GN-Portland-UP
Newsprint (2 cars)	Steilacoom, Wash.	San Francisco	WP-Tacoma-GN-WP UP

Source of Tables 17 and 18: WP Accounting Department's Official Records.

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BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 4

Copies of pages of Pacific Southcoast Freight Bureau Tariff 1-S, ICC 1352, containing present routing arrangements in effect via the Southern Pacific Company via Portland, Oregon, thence via the Northern Pacific Railway or Union Pacific Railroad Company.

SECTION 6

ROUTING FOR RATES IN SECTIONS 4, 4-A OR 5, APPLICABLE VIA OR IN CONNECTION WITH SP
When the rate applies from a point on a line shown in Column 1, the route should be read from left to right.
When the rate applies from a point on a line shown in Column 2, the route should be read from right to left.
(See pages 102 to 119 for points designated by Index Nos.)

ROUTING TO (OR FROM) POINTS ON SP, OR TO (OR FROM) ORE. JUNCTIONS WITH SP		ROUTING FROM (OR TO) ORE. JUNCTIONS WITH SP	
COLUMN 1	VIA	VIA	COLUMN 2
FROM (OR TO) POINTS ON			TO (OR FROM) POINTS ON
ATSF (Index Nos.):		Portland (Park St.), Ore., NP, Sumas, Wash.-Huntingdon, B. C.	BCE
25, 45 to 60, 103 to 120, 130 to 215	Stockton, Cal., SP	Portland (Park St.), Ore., NP (via Pasco, Wash.), Riparia, Wash	
65 to 85	Port Chicago or ①Stockton, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco, Wash., NP, Riparia, Wash	CamP
90 to 95	Pittsburg or ①Stockton, Cal., SP	Portland (Park St.) or East Portland, Ore., UP, Riparia, Wash	
100 (when taking Group 15 rates)	Stockton, Cal., SP	Portland (Park St.), Ore., NP, Sumas, Wash.-Huntingdon, B. C.	CP-W (except V&LI Branch, Index Nos. 20360 to 20395)
100 (when taking Group 16 rates) (see Note 3)	Pittsburg or ①Stockton, Cal., SP	Portland (Park St.), Ore., NP, Sumas, Wash.-Huntingdon, B. C., BCE, New Westminster, B. C.	CP-W (V&LI Branch), viz.: Index Nos. 20360 to 20395
220 to 520	Stockton or Fresno, Cal., SP		CMSP&P (Index Nos.):
525 to 625, 715, 1065 to 1150	Stockton, Fresno or Bakersfield, Cal., SP	Portland (Park St.), Ore., GN or NP, Chehalis, Wash	10085 to 10105
630 to 660, 725 to 740, 840 to 910	Stockton, Fresno, Bakersfield, Colton or Los Angeles, Cal., SP	Portland (Park St.) or East Portland, Ore., UP, Chehalis, Wash	8850 to 8965, 8910 to 8970, f10085 to f10105
665 to 710, 720, 750 to 835, 925 to 1060	Stockton, Fresno, Bakersfield or Los Angeles, Cal., SP	⑦Portland (Park St.) or East Portland, Ore., UP, Chehalis, Wash	
CCT: Index Nos. 1260 to 1365	Sacramento, Cal., SP	⑥Portland (Park St.) or East Portland, Ore., UP, Seattle, Wash	8990 to 10095, 10120, 10125
HI	El Centro, Cal., SP	Portland (Park St.), Ore., GN or UP, Chehalis, Wash	f10000 to f10080
NN	Cobre, Nev., SP	Portland (Park St.) or East Portland, Ore., UP, Marengo, Wash	10130 to 10275
NWP	Schellville, Cal., SP	Portland (Park St.) or East Portland, Ore., UP, Plummer, Ida	10285 to 10385
PE (Index Nos.):		aPortland (Park St.) or East Portland, Ore., UP Spokane, Wash	10095d to 10105
1840 to 2155, 2210 to 2302, 2375	Los Angeles, Cal., SP	δ^Portland (Park St.), Ore., GN or NP, Rocky Point, Wash	Cal&C
2185	④Los Angeles, Cal., SP ②San Fernando, Cal., SP	δ^Portland (Park St.), or East Portland, Ore., UP, Rocky Point, Wash	
2200	④Los Angeles, Cal., SP ⑤Glendale, Cal., SP		GN (Index Nos.):
2305 to 2370, 2380 to 2390	Los Angeles or Colton, Cal., SP	⑥Chemult, Ore	10087 to 10705, 11505 to 11545, 11550 to 11560, 11567[10], 11569[6], 11569[9], 11568[13], 11569[4], 11569[12]
PMT: Index Nos. 5650 to 5660	Lone Pine, Cal., SP	Portland (Park St.), Ore	10710 to 10725, 10735 to 11455, 11465 to 11500
P&SR	Petaluma, Cal., NWP, Schellville, Cal., SP	Portland (Park St.) or ⑥Chemult, Ore	11460, 11546, 11565, 11575
SMV	Guadalupe, Cal., SP	Portland (Park St.) or ⑥Chemult, Ore	11570, 11840, 11875
SRR	Oakdale, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Spokane, Wash	
SP:		⑥Chemult, Ore	11505 to 11567[9], 11567[11] to 11569[4], 11569[6] to 11569[8], 11569[10] to 11569[12], 11569[14] to 11569[3], 11569[5] to 11569[11], 11580 to 11835, 11845 to 11870, 11880 to 11940
All points (see Note 2)	SP	Portland (Park St.) or East Portland, Ore., SP&S, Spokane, Wash	
Index Nos. 3360 (see Note 1) to 3370, 3400 to 3405	①Port Chicago, Cal., ATSF, Stockton, Cal., SP		
Index Nos. 3410 to 3425	①Pittsburg, Cal., ATSF, Stockton, Cal., SP		
Index No. 5071	②Los Angeles, Cal., PE, Los Angeles, Cal., SP		
STE: Index No. 6775	Stockton, Cal., SP		
SunRy: Index Nos. 6830 to 6865	Bakersfield, Cal., SP		
UP (Index Nos.):			
6990 to 7010, 7025 to 7075, 7140	Los Angeles, Cal., SP		
7085 to 7135, 7145	Los Angeles or Colton, Cal., SP		
VC	Oxnard, Cal., SP		
VE (Index Nos.): 7300 to 7365	Exeter, Cal., SP		
WP (Index No.): 7840	Marysville, Cal., SP		

NP routing for Indices 13520 to 13180 transferred to 26th Revised Page 535.

δReduction. (JT-8055) ^Change; no increase or reduction, except as noted.
fApplies only in connection with traffic originating at or destined to points on the ATSF, PE, SP, TRy, UP or VE.
④Applies only in connection with shipments destined to points on CMSP&P. ⑤Does not apply via Pelida, Wash.
⑦Applies only in connection with shipments originating at points on CMSP&P.
a—Applies only from points on SP and PE in Group 17A and only in connection with transit privileges on Iron and Steel at Spokane, Wash., on UP as provided in Section 29 of NPCFB Tariff 117-B, ICC 935.
For Explanation of Notes and other Reference Marks, see Page 536A.

SECTION 6

ROUTING FOR RATES IN SECTIONS 4, 4-A OR 5, APPLICABLE VIA OR IN CONNECTION WITH SP

When the rate applies from a point on a line shown in Column 1, the route should be read from left to right.
When the rate applies from a point on a line shown in Column 2, the route should be read from right to left.
(See pages 103 to 119 for points designated by Index Nos.)

ROUTING TO (OR FROM) POINTS ON SP, OR TO (OR FROM) ORE. JUNCTIONS WITH SP		ROUTING FROM (OR TO) ORE. JUNCTIONS WITH SP	
COLUMN 1 FROM (OR TO) POINTS ON	VIA	VIA	COLUMN 2 TO (OR FROM) POINTS ON
ATSF (Index Nos.): 25, 45 to 60, 105 to 120, 130 to 215	Stockton, Cal., SP		NP (Index Nos.): 13520
65 to 85	Port Chicago or ①Stockton, Cal., SP	⑥East Portland, Ore., UP, North Portland Ore.	
90 to 95	Pittsburg or ①Stockton, Cal., SP	Portland (Park St.), Ore.	12130 to 13120 (see Note 4)
100 (when taking Group 15 rates)	Stockton, Cal., SP	Portland (Park St.), Ore.	
100 (when taking Group 16 rates) (see Note 3)	Pittsburg or ①Stockton, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco, Wash.	13125
220 to 530	Stockton or Fresno, Cal., SP	Portland (Park St.), Ore.	13127 to 13180
535 to 625, 715, 1005 to 1150	Stockton, Fresno or Bakersfield, Cal., SP	Portland (Park St.), Ore.	13186 to 13310, 13313 to 13315, ⑥13320, 13325 to 13345, 13360 to 13740, ⑦13745 to ⑦13810, 13855 to 13950, ③13960 to ③13995, ⑦14005 to ⑦14055
630 to 660, 725 to 760, 840 to 910	Stockton, Fresno, Bakersfield, Colton or Los Angeles, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco, Wash.	
665 to 710, 720, 750 to 835, 925 to 1000	Stockton, Fresno, Bakersfield or Los Angeles, Cal., SP	Portland (Park St.), Ore.	14060 to 14240
CCT (Index Nos.): 1250 to 1305	Sacramento, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco or Spokane, Wash.	
HI	El Centro, Cal., SP	Portland (Park St.), Ore.	
NN	Colton, Nev., SP	Portland (Park St.), Ore., NP (via Pasco, Wash.), Riparia, Wash., CamP, Arrow, Ida.	
NWP	Schellville, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco or Spokane, Wash.	14245 to 14365
PE (Index Nos.): 1840 to 2155, 2210 to 2302, 2375	Los Angeles, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco, Wash., NP, Riparia, Wash., CamP, Arrow, Ida.	
2185	①Los Angeles, Cal., SP ②San Fernando, Cal., SP	Portland (Park St.), Ore.	14300
2300	①Glendale, Cal., SP ②Los Angeles, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco, Wash.	
2305 to 2370, 2380 to 2390	Los Angeles or Colton, Cal., SP	Portland (Park St.), Ore.	
PMT: Index Nos. 5650 to 5660	Lone Pine, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco or Spokane, Wash.	14303, 14315
PSR	Petaluma, Cal., NWP, Schellville, Cal., SP	Portland (Park St.) or East Portland, Ore., UP, Spokane, Wash.	
SMV	Guadalupe, Cal., SP	Portland (Park St.), Ore.	14305 to 14310
SRR	Oakdale, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco or Spokane, Wash.	
SP: All points (see Note 2)	SP	(Routing for NP concluded on next page.)	
Index Nos. 2360 (see Note 1) to 2370, 2400 to 2405	①Port Chicago, Cal., ATSF, Stockton, Cal., SP		
Index Nos. 2410 to 2425	①Pittsburg, Cal., ATSF, Stockton, Cal., SP		
Index No. 5871	①Los Angeles, Cal., PE, Los Angeles, Cal., SP		
STE: Index No. 6775	Stockton, Cal., SP		
Souby: Index Nos. 6830 to 6865	Bakersfield, Cal., SP		
UP (Index Nos.): 6950 to 7010, 7025 to 7075, 7140	Los Angeles, Cal., SP		
7085 to 7135, 7145	Los Angeles or Colton, Cal., SP		
VC	Oxnard, Cal., SP		
VE (Index Nos.): 7300 to 7365	Exeter, Cal., SP		
WP: Index No. 7940	Marysville, Cal., SP		

①Applies only via Cheney, Wash.
②Applies only via Portland (Park St.), Ore., NP, direct.
⑦Applies only via Schlomer, Wash.
⑧Applies only on tin plate transited on the Union Pacific at St. Johns, Ore.
△For routes in effect prior to effective date hereof, see 37th Revised Page 534.
For Explanation of Notes and other Reference Marks, see Original Page 536A.

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SECTION 6

ROUTING FOR RATES IN SECTIONS 4, 4-A OR 5, APPLICABLE VIA OR IN CONNECTION WITH SP

When the rate applies from a point on a line shown in Column 1, the route should be read from left to right.
When the rate applies from a point on a line shown in Column 2, the route should be read from right to left.
(See pages 102 to 119 for points designated by Index Nos.)

ROUTING TO (OR FROM) POINTS ON SP, OR TO (OR FROM) ORE. JUNCTIONS WITH SP		ROUTING FROM (OR TO) ORE. JUNCTIONS WITH SP	
COLUMN 1			
FROM (OR TO) POINTS ON (CJT-1433)	VIA	VIA	COLUMN 2
			TO (OR FROM) POINTS ON
ATSF (Index Nos.):			NP (Concluded) (Index Nos.):
25, 45 to 60, 105 to 120, 130 to 215	Stockton, Cal., SP	Portland (Park St.), Ore.	14317 to 14480
65 to 85	Port Chicago or ①Stockton, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco or Spokane, Wash.	
90 to 95	Pittsburg or ①Stockton, Cal., SP		
100 (when taking Group 15 rates)	Stockton, Cal., SP	Portland (Park St.), Ore. (via Paradise and St. Regis, Mont.)	
100 (when taking Group 16 rates) (See Note 3)	Pittsburg or ①Stockton, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco or Spokane, Wash., NP (via Paradise and St. Regis, Mont.)	14535 to 14555
220 to 230	Stockton or Fresno, Cal., SP		
525 to 625, 715, 1065 to 1150	Stockton, Fresno or Bakersfield, Cal., SP	Portland (Park St.), Ore. (via Paradise and St. Regis, Mont.)	
630 to 690, 725 to 740, 840 to 910	Stockton, Fresno, Bakersfield, Colton or Los Angeles, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco or Spokane, Wash., NP (via Paradise and St. Regis, Mont.)	14560 to 14570
665 to 710, 720, 750 to 835, 925 to 1060	Stockton, Fresno, Bakersfield or Los Angeles, Cal., SP	Portland (Park St.) or East Portland, Ore., UP, Wallace, Ida.	
CCT (Index Nos.):		Portland (Park St.), Ore. (via Paradise and St. Regis, Mont.)	
1260 to 1365	Sacramento, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco or Spokane, Wash., NP (via Paradise and St. Regis, Mont.)	14575 to 14625
HI	El Centro, Cal., SP	Klamath Falls, Ore.	OC&E
McCR	Mt. Shasta, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Wishram, Wash.	OT
NN	Cobre, Nev., SP	Portland (Park St.), Ore., GN or NP, Black River Jct. or ④Seattle, Wash.	PCRR
NWP	Schellville, Cal., SP	East Portland, Ore., UP, Black River Jct. or ④Seattle, Wash.	
PE (Index Nos.):		Portland (Park St.), Ore., GN, Vancouver, B. C., CN-W or CP-W, North Vancouver, B. C.	PGE
1840 to 2155, 2210 to 2302, 2375	Los Angeles, Cal., SP	Portland (Park St.), Ore., NP, Sumas, Wash.-Huntington, B. C., thence; 4(a) BCE, New Westminster, B. C., CP-W (V&LI Branch), Vancouver, B. C., CP-W, North Vancouver, B. C. (b) CP-W, North Vancouver, B. C.	
2185	④Los Angeles, Cal., SP ④San Fernando, Cal., SP		
2200	④Glendale, Cal., SP ④Los Angeles, Cal., SP	Portland (Park St.), Ore., UP, Seattle, Wash., IT&BL, Squamish, B. C.	
2305 to 2370, 2380 to 2390	Los Angeles or Colton, Cal., SP	East Portland, Ore.	PT
PMT: Index Nos. 5650 to 5660	Lone Pine, Cal., SP	Portland (Park St.) or East Portland, Ore., UP, Seattle, Wash., CMSP&P, Port Townsend, Wash.	PTS
P&SR	Petaluma, Cal., NWP, Schellville, Cal., SP	(See Column 1)	SP
SMV	Guadalupe, Cal., SP		
SRR	Oakdale, Cal., SP		
SP:			
All points (see Note 2)	SP		
Index Nos. 3360 (see Note 1) to 3370, 3400 to 3405	①Port Chicago, Cal., ATSF, Stockton, Cal., SP		
Index Nos. 3410 to 3425	①Pittsburg, Cal., ATSF, Stockton, Cal., SP		
Index No. 5071	②Los Angeles, Cal., PE, Los Angeles, Cal., SP		
STE: Index No. 6775	Stockton, Cal., SP		
Sunky: Index Nos. 6890 to 6965	Bakersfield, Cal., SP		
⑤TRy	Searles, Cal., SP		
UP (Index Nos.):			
6990 to 7010, 7025 to 7075, 7140	Los Angeles, Cal., SP		
7085 to 7135, 7145	Los Angeles or Colton, Cal., SP		
VC	Oxnard, Cal., SP		
VE (Index Nos.): 7300 to 7365	Exeter, Cal., SP		
WP: Index No. 7840	Marysville, Cal., SP		
YW	Montague, Cal., SP		

4Reduction on north bound traffic.
For Explanation of Notes and other Reference Marks, see Page 536A.

SECTION 6

ROUTING FOR RATES IN SECTIONS 4, 4-A OR 5, APPLICABLE VIA OR IN CONNECTION WITH SP

When the rate applies from a point on a line shown in Column 1, the route should be read from left to right.
When the rate applies from a point on a line shown in Column 2, the route should be read from right to left.
(See pages 102 to 119 for points designated by Index Nos.)

ROUTING TO (OR FROM) POINTS ON SP, OR TO (OR FROM) ORE. JUNCTIONS WITH SP		ROUTING FROM (OR TO) ORE. JUNCTIONS WITH SP	
COLUMN 1	VIA	VIA	COLUMN 2
FROM (OR TO) POINTS ON			TO (OR FROM) POINTS ON
ATSF (Index Nos.):			SI (Index Nos.):
25, 45 to 60, 103 to 120, 130 to 215	Stockton, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco, Wash., NP, Spokane, Wash.	17308
65 to 85	Port Chicago or ⑦Stockton, Cal., SP	Portland (Park St.), Ore., NP, Spokane, Wash.	
90 to 95	Pittsburg or ⑦Stockton, Cal., SP	Portland (Park St.) or East Portland, Ore., UP, Spokane, Wash.	17303, 17305, 17310, 17313, 17314, 17315 to 17310
100 (when taking Group 15 rates)	Stockton, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Spokane, Wash.	17308, 17305, 17310, 17313, 17314
100 (when taking Group 16 rate) (see Note 3)	Pittsburg or ⑦Stockton, Cal., SP	Portland (Park St.) or ⑦Chemult, Ore., GN, Spokane, Wash.	17313, 17314, 17375
220 to 520	Stockton or Fresno, Cal., SP		
525 to 625, 715, 1065 to 1150	Stockton, Fresno or Bakersfield, Cal., SP	Portland (Park St.) or East Portland, Ore.	SP&S (Index Nos.): 17535 to 17546[1], 17547[2], 17548, 17550 to 17890, 18040
630 to 660, 725 to 740, 840 to 910	Stockton, Fresno, Bakersfield, Colton or Los Angeles, Cal., SP	Portland (Park St.) or East Portland, Ore.	
665 to 710, 720, 750 to 835, 925 to 1060	Stockton, Fresno, Bakersfield or Los Angeles, Cal., SP	Chemult, Ore., GN, Bend, Ore., OT, Wishram, Wash.	17535 to 18025
CCT (Index Nos.): 1260 to 1365	Sacramento, Cal., SP		
HI	El Centro, Cal., SP	Portland (Park St.) or East Portland, Ore.	UP (Index Nos.): 18075 to 18105, 18110 to 20270
NN	Cobre, Nev., SP	Portland (Park St.) or East Portland, Ore.	
NWP	Schellville, Cal., SP	Portland (Park St.) or East Portland, Ore., NP, Wallace, Ida.	20050
PE (Index Nos.): 1840 to 2155, 2210 to 2302, 2375	Los Angeles, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco or Spokane, Wash., NP, Wallace, Ida.	
2185	④Los Angeles, Cal., SP ④San Fernando, Cal., SP		
2200	④Los Angeles, Cal., SP ④Glendale, Cal., SP	Portland (Park St.), Ore., NP, Walla Walla, Wash.	WWY
2305 to 2370, 2380 to 2390	Los Angeles or Colton, Cal., SP	Portland (Park St.) or East Portland, Ore., SP&S, Pasco, Wash., NP, Walla Walla, Wash.	
④PMT: Index Nos. 5650 to 5660	Lone Pine, Cal., SP		
PSR	Petaluma, Cal., NWP, Schellville, Cal., SP	Chemult, Ore., GN, Palouse, Wash.	WI&M (Index Nos.):
SMV	Guadalupe, Cal., SP	Portland (Park St.), Ore., NP, Palouse, Wash.	
SRR	Oakdale, Cal., SP	Portland (Park St.), Ore., SP&S, Pasco, Wash., NP, Palouse, Wash.	20695, 20705, 20740, 20745, 20750
SP:		Portland (Park St.), Ore., SP&S, Spokane, Wash., GN, Palouse, Wash.	
All points (see Note 2)	SP	⑥Portland (Park St.), Ore., UP, Plummer, Ida., CMSP&P, Bovill, Ida.	
Index Nos. 3360 (see Note 1) to 3370, 3400 to 3405	⑦Port Chicago, Cal., ATSF, Stockton, Cal., SP		
Index Nos. 3410 to 3425	⑦Pittsburg, Cal., ATSF, Stockton, Cal., SP	Pulp, Portland (Park St.) or East Portland, Ore.	WTCo (Index Nos.): 20690
Index No. 5071	⑦Los Angeles, Cal., PE, Los Angeles, Cal., SP	Portland (Park St.) or East Portland, Ore.	20690, 20905
STE: Index No. 6775	Stockton, Cal., SP		
Sunky: Index Nos. 6630 to 6665	Bakersfield, Cal., SP	Portland (Park St.), Ore., UP, Yakima, Wash.	YVT
UP (Index Nos.): 6960 to 7010, 7025 to 7075, 7140	Los Angeles, Cal., SP		
7085 to 7135, 7145	Los Angeles or Colton, Cal., SP		
VC	Oxnard, Cal., SP		
VE (Index Nos.): 7300 to 7365	Exeter, Cal., SP		
WP: Index No. 7940	Marysville, Cal., SP		

⑦Route does not apply to (or from) Index No. 20750.
⑦Does not apply via Felida, Wash.
④Addition. (RA-8087)
For Explanation of Notes and other Reference Marks, see Original Page 536A.

SECTION 6

ROUTING FOR RATES IN SECTIONS 4, 4-A OR 5, APPLICABLE VIA OR IN CONNECTION WITH SP

EXPLANATION OF NOTES AND REFERENCE MARKS

(Applies only in connection with pages making specific reference hereto)

Note 1—Rates from or to Martinez, Cal. (Index No. 3360), applicable via Port Chicago, Cal., in connection with ATSF, apply only from or to the territory within SP Martinez, Cal., switching limits extending from a point 1125 feet east of Pine Street (Engineer's Station 2500 plus 21.8) to the eastern city limits of Martinez, Cal. (Engineer's Station 2442.0), which is otherwise know as Mococo, Cal.

Note 2—Rates from or to points in Groups 17-A, 17-C and 17-D apply via Mojave and Bakersfield, Cal., only.
Rates from or to points in Group 17-B, vis.: Index Nos. 6615 to 6630 apply via San Luis Obispo, Cal., only.
Rates from or to points in Group 17-B, vis.: Index Nos. 6660, 6665 and 6670 apply via Mojave and Bakersfield or via San Luis Obispo, Cal.

Note 3—Rates from or to Index 100 (Antioch) applicable via Pittsburg, Cal., in connection with SP, apply only from or to the territory within ATSF, Antioch, Cal., switching limits extending between "O" Street on the east (Engineer's Station 1122 plus 08.7) in the western city limits of Antioch, Cal., and a point 1675.9 feet west thereof (Engineer's Station 1105 plus 32.8) on the west. ^For list of industries at Antioch, Cal., embraced within preceding description, see Item 150 of SP Terminal Tariff 230-K, ICC 4960, or Item 4170 of ATSF Local and Joint Freight Tariff 8117-R, ICC 14456.

Note 4—See paragraph (j), Page 530 for internal routing over NP.

①Route does not apply to (or from) points on GN designated by Index Nos. 10690 to 10705, points on OC&E, points in Cal., on SP designated by Index Nos. 15610 to 15620, nor points in Ore., on SP (except Group 26 points).

②Applies only on shipments of Iron or Steel Articles fabricated in transit at Baldwin Park, Cal., on PE under provisions of PSFB Tariff 264-G, ICC 1620.

③Applies from or to points on SP.

④Applies on LCL traffic only.

⑤Applies on carload traffic only.

^Change; no increase or reduction.

[Fol. 500]

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[fol. 501]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 5

ies of pages of Pacific Southcoast Freight Bureau Tariff 1-S,
1352, containing present routing arrangements in effect via
Western Pacific Railroad Company via Bieber, Cal. between
nts in California and points in Oregon, Washington and
thern Idaho.

APPLICATION OF RATES	Item
RATES FROM (OR TO) LONGVIEW, WASH., ON GN, NP OR UP Except where rates are specifically provided from (or to) Longview, Wash., in connection with GN, NP or UP, rates applying from (or to) Kelso, Wash., in connection with GN, NP or UP, also apply from (or to) Longview, Wash., in connection with GN, NP or UP, as the case may be. Rules 4(i), 8(f) and 9(a) of Tariff Circular waived; ICC Permission 85478. (E-121460)	^715-B
RATES FROM AND TO VISALIA, CAL., ON SP Except where through rates are specifically named in this Tariff, and as amended, rates applicable from (or to) 5450 Tulare, Cal., on SP, will also apply from (or to) 5440 Visalia, Cal., via the same routes via which rates from (or to) Tulare, Cal., on SP apply. Rules 4(i), 8(f) and 9(a) of Tariff Circular waived; ICC Permission 85478. (E-121460)	^715-C
RATES VIA ALTURAS LINE OF SPCo. (Applies only on traffic originating at or destined to points in the territory Klamath Falls and north via Mohawk Junction, Springfield or Eugene except will not apply to or via Goshen or Danebo, Oregon) When, because of excess dimensions, a shipment cannot be handled via Gerber, Cal., the shipment will be handled via Alturas, Cal., at rates applicable via Gerber, Cal.	717-A Cancels 717
RATES FROM (OR TO) ZURICH, MONOLA, ABERDEEN, KEARSARGE AND OWENYO, CAL., ON PMT Except where through rates are specifically published, rates named in this Tariff, and as amended, applicable from (or to) Laws, Cal., on PMT will also apply from (or to) Zurich, Monola, Aberdeen, Kearsarge and Owenyo, Cal., via the same routes via which rates from (or to) Laws, Cal., on PMT apply. The form of this publication authorized by ICC Permission 86963. (RA-8087)	‡^718
ROUTES VIA WHICH RATES APPLY: Except where routing is specifically provided immediately in connection with an individual rate, the rates named in Sections 4 and 5, apply from the respective points and to the respective points, only via the routes provided therefor in Section 6, and will not apply from or to points for which no routing is provided in Section 6. (See Exception.) Where specific routing is provided in an individual rate item, the rate applies only via such routing, unless such routing is phrased "Also applies via, etc." or "Rates also apply via, etc.", in which case the rate applies via routes provided in Section 6, as well as via such routing. (See Exception.) Exception—When in the case of pronounced traffic congestion (not an embargo), washout, wreck, or other similar emergency, or through carriers' error, carriers forward shipments via other junction points of the same carriers or via the lines of other carriers parties to the Tariff, the rate to apply will be that named herein via routes provided immediately in connection with rate or in Section 6, but not higher than the rate applicable via the route of movement. Departure from the terms of the amended fourth section of the Interstate Commerce Act, is permitted by authority of ICC Fourth Section Order No. 10600, issued July 25, 1930. ^(a) The routes shown in connection with individual rates and the routes shown in Section 6, are those via which an agreed basis of divisions is in force. ^(b) Unless otherwise specifically provided herein, rates for that portion of the haul over the ATSF apply via routes provided in ATSF Circular 2509, ICC 14127. ^(c) Unless otherwise specifically provided herein, rates for that portion of the haul over PE, apply via routes provided in PE Freight Tariff 270-A, ICC 119. ^(d) Unless otherwise specifically provided herein, rates for that portion of the haul over SP, apply via routes provided in SP GFD Circular 199-G, ICC 5011. (e) Reference to NWP GFD Circular 25-C, ICC 205 eliminated; ^no provisions in effect. ^(f) Unless otherwise specifically provided herein, rates for that portion of the haul over the UP, apply via routes provided in UP Tariff 9069-A, ICC 5313.	720-E
(Applies on Interstate Traffic only) **SUBSTITUTED SERVICE** (Applies only in connection with Southern Pacific Company—Pacific Lines) Cancel; ^provisions otherwise provided in Tariff apply. (RA-8087)	‡725-C
SUBSTITUTION OF MOTOR CARRIER SERVICE FOR RAIL OR WATER SERVICE: LCL shipments handled under this Tariff are made subject to the provisions of National Substituted Freight Service Freight Tariff 420-A, ICC A-4173 (Western Trunk Line Committee, Agent), and where substituted service as authorized therein is performed, rates named herein will apply. Departure from the terms of Tariff Circular 20 to the extent necessary to publish this provision is authorized by special permission of the ICC No. 178475, R-M No. 2137 of October 17, 1939 (Corrected). (File UFOC)	^730-C
SWITCHING, DRAYAGE OR OTHER TRANSFER CHARGES AT INTERMEDIATE INTERCHANGE POINTS: The joint rates published herein include all charges for switching, drayage, or other transfer services at intermediate interchange points on shipments handled through and not stopped for special services at such intermediate interchange points.	735

^Change; no increase or reduction.
‡Effective May 1, 1960. Issued on ten days' notice under authority of ICC Finance Docket No. 20510 and ICC Permission 86963.

SECTION 6.

ROUTING

SPECIAL RULES

(a) Subject to the provisions of Item 720, rates named in this Tariff apply only via routes shown in this section, unless otherwise specifically provided immediately in connection with an individual rate.

(b) The publication of a rate in this Tariff from points in a numbered Group to points in a numbered Group, from individual points to a numbered Group, or from a numbered Group to individual points, does not imply that said rate applies from or to all points in said Group. Rates so published apply only from or to points in Groups for which routing is provided in this Section, or immediately in connection with the rate.

(c) Rates from or to individual points shown on pages 75 to 101 as being Group 19 or Group 20 points, will not apply via, or in connection with the UP., via Salt Lake City, Utah and Huntington, Ore., unless specifically published under the caption "Group 19 points" or "Group 20 points," or unless that routing is specifically shown in rate item.

(d) Rates shown in this Tariff as applicable via routes in connection with SP., apply only via the routes provided on pages 534 to 536.

(e) Rates shown in this Tariff as applicable via routes in connection with WP., via Bieber, Cal. apply only via the routes provided on page 537.

(f) Rates from or to "Group 19" or "Group 20" or from or to individual points published under caption "Group 19 points" or "Group 20 points," apply only via routes provided on page 538.

(g) Rates from or to "Group 26" or from or to individual points published under caption "Group 26 points" apply only via SP., or SP. and Connections, via routes provided on pages 534 to 536.

(h) Rates from or to "Group 27" or "**", or from or to individual points published under caption "Group 27" or "**", apply only via WP. and Connections, via routes provided on page 537.

(i) Eliminated; account Sections 1A and 1B cancelled.

▲(j) Rates shown in this Tariff as applicable via routes in connection with NP from or to Index 12620 to Index 12955 inclusive will apply only via Sumner, Wash. (Index 12610); from or to Index 12690 to Index 12730 inclusive will apply only via Argo, Wash. (Index 12687); and from or to Index 12670 to Index 12680 inclusive will apply only via Renton, Wash. (Index 12650).

**Group 27A eliminated. ▲Change; no increase or reduction.

SECTION 6

ROUTING FOR RATES IN SECTIONS 4, 4-A OR 5, APPLICABLE VIA OR IN CONNECTION WITH SP

EXPLANATION OF NOTES AND REFERENCE MARKS

(Applies only in connection with pages making specific reference hereto)

Note 1—Rates from or to Martinez, Cal. (Index No. 3300), applicable via Port Chicago, Cal., in connection with ATSF, apply only from or to the territory within SP Martinez, Cal., switching limits extending from a point 1125 feet east of Pine Street (Engineer's Station 2500 plus 21.8) to the eastern city limits of Martinez, Cal. (Engineer's Station 2442.0), which is otherwise know as Mococo, Cal.

Note 2—Rates from or to points in Groups 17-A, 17-C and 17-D apply via Mojave and Bakersfield, Cal., only.
Rates from or to points in Group 17-B, vis.: Index Nos. 6615 to 6630 apply via San Luis Obispo, Cal., only.
Rates from or to points in Group 17-B, vis.: Index Nos. 6660, 6665 and 6670 apply via Mojave and Bakersfield or via San Luis Obispo, Cal.

Note 3—Rates from or to Index 100 (Antioch) applicable via Pittsburg, Cal., in connection with SP, apply only from or to the territory within ATSF, Antioch, Cal., switching limits extending between "O" Street on the east (Engineer's Station 1122 plus 08.7) in the western city limits of Antioch, Cal., and a point 1675.9 feet west thereof (Engineer's Station 1105 plus 32.8) on the west. ^For list of industries at Antioch, Cal., embraced within preceding description, see Item 180 of SP Terminal Tariff 230-K, ICC 4960, or Item 4170 of ATSF Local and Joint Freight Tariff 8117-R, ICC 14456.

Note 4—See paragraph (j), Page 530 for internal routing over NP.

①Route does not apply to (or from) points on GN designated by Index Nos. 10690 to 10705, points on OC&E, points in Cal., on SP designated by Index Nos. 15610 to 15620, nor points in Ore., on SP (except Group 26 points).

②Applies only on shipments of Iron or Steel Articles fabricated in transit at Baldwin Park, Cal., on PE under provisions of PSFB Tariff 264-G, ICC 1620.

③Applies from or to points on SP.

④Applies on LCL traffic only.

⑤Applies on carload traffic only.

^Change; no increase or reduction.

SECTION 6

ROUTING FOR RATES IN SECTIONS 4, 4-A OR 5, APPLICABLE IN CONNECTION WITH WP VIA BIEBER, CAL.

When the rate applies from a point on a line shown in Column 1, the route should be read from left to right.
When the rate applies from a point on a line shown in Column 2, the route should be read from right to left.
(See pages 102 to 110, for points designated by Index Nos.)

ROUTING TO (OR FROM) BIEBER, CAL.		ROUTING FROM (OR TO) BIEBER, CAL.	
COLUMN 1 FROM (OR TO) Points on	VIA	VIA	COLUMN 2 TO (OR FROM) Points on (Index Nos.)
ATSF	CL Traffic: Stockton, Cal., WP	GN, New Westminster, B. C.	BCR 8180c, 8181, 8182 8201, 8202, 8203
	LCL Traffic: San Francisco, Oakland or Stockton, Cal., WP	①GN, Chehalis, Wash.	CMSP&P 8850 to 8995, ⑤9000 9010 to 9085, ⑤9090 δ 10000 to δ 10105, 10115 to 10385
B&RN	San Francisco or Western Pacific Mole, Cal., WP		
	San Francisco or Richmond, Cal., ATSF, Stockton, Cal., WP	GN	GN 10650 to 10705
CCT	Sacramento, Cal., WP	①GN	10715 to 11354
MET	CL Traffic: Empire, Cal., ATSF, Stockton, Cal., WP	②GN	11355 to 11560, 11565
	LCL Traffic: Empire, Cal., ATSF, San Francisco, Oakland or Stockton, Cal., WP	③GN	11566 to 11569[12] 11570 to 11940
NN	Shafter, Nev., WP	①GN (via Blaine, Wash.), Vancouver, B. C.	CN-W (formerly NHB) 8038, 8040
SN Index 2545 to 2730 2745 to 2750	Sacramento or Marysville, Cal., WP	GN, Rocky Point, Wash.	Col&C
		GN, Klamath Falls, Ore.	OC&E
2735 2755 to 2800 2810 to 2930	Marysville, Cal., WP	①GN, Portland or Willbridge, Ore.	OE 14760 to 14940
		GN, Bend, Ore.	OT
2805	Sacramento, Cal., WP	①GN, Black River Jct., Wash. (Applies on carload traffic only)	PCRR
SP Index Nos. 3360 (see Note 1) to 3370 3400 to 3405	CL Traffic: Port Chicago, Cal., ATSF, Stockton, Cal., WP	①GN, Seattle, Wash. (Applies on LCL traffic only)	
	LCL Traffic: Port Chicago, Cal., ATSF, San Francisco, Oakland or Stockton, Cal., WP	GN, Vancouver, B. C., CN-W or CP-W, North Vancouver, B. C.	PGE
3410 to 3425	CL Traffic: Pittsburg, Cal., ATSF, Stockton, Cal., WP	①GN, Portland, Ore., SP&S, East Portland, Ore.	PT
	LCL Traffic: Pittsburg, Cal., ATSF, San Francisco, Oakland or Stockton, Cal., WP	②GN, Spokane, Wash.	SI 17303, 17305 to 17345 17350 to 17375
STE	Stockton, Cal., WP	①GN, Portland, Ore.	SP&S 17535, 17546 to 17550 17555 to 17645
SunRy	CL Traffic: Bakersfield, Cal., ATSF, Stockton, Cal., WP	GN, Bend, Ore., OT, Wishram, Wash.	17670 to 17825 17835 to 18035
	LCL Traffic: Bakersfield, Cal., ATSF, San Francisco, Oakland or Stockton, Cal., WP	②GN, Palouse, Wash.	WI&M
TS	Stockton, Cal., WP	①GN, Portland or East Portland, Ore.	WTCo
WP	WP	①GN, Tacoma, Wash.	⁴⑥FL&T

①Does not apply via Spokane, Wash.
②Does not apply via Felida, Wash., except as otherwise provided.
③⁴See routing restriction in connection with Group 29A explanation, page 74.
④⁴See routing restriction in connection with Group 29B explanation, page 74.
⑤Applies only on carload traffic originating (or destined) industries served by the Simpson Logging Co. Railroad on the one hand and (except as otherwise provided in individual rate items) destined (or originating) points on SN, TS or WP routed via Bieber, Cal., on the other.
⑥Applies only in connection with traffic originating at (or destined to) points on the ATSF, SN, TS or WP.
For Explanation of Note 1, see Page 536A.

⁴Change; no increase or reduction.

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SECTION 6

ROUTING FOR RATES IN SECTIONS 4, 4-A OR 5, APPLICABLE IN CONNECTION WITH WP VIA BIEBER, CAL., NOT OTHERWISE PROVIDED ON PAGE 537

Routing provided below applies only on shipments accorded transit privileges as specifically authorized in connection with each such route.

(See pages 102 to 119, for points designated by Index Nos.)

ROUTING TO BIEBER, CAL.		ROUTING FROM BIEBER, CAL.	
COLUMN 1 FROM Points on	VIA	VIA	COLUMN 2 TO Points on
ATSF Group 17A	Via Routes provided on Page 537.....	⑫GN, Spokane, Wash.....	CMStP&P Index Nos. 10095d to 10105
ATSF	①Stockton, Cal., WP, Marysville, Cal., SN, ◆transit point, SN, Marysville, Cal., WP...	Routes provided on page 537.....	Lines of Carriers party to this Tariff to which routes are provided on page 537.
CCT	①Sacramento, Cal., WP, Marysville, Cal., SN, Yuba City, Cal., SN, Marysville, Cal., WP..		
STE TS	①Stockton, Cal., WP, Marysville, Cal., SN, Yuba City, Cal., SN, Marysville, Cal., WP..		
WP	⑫Marysville, Cal., SN, Yuba City, Cal., SN, Marysville, Cal., WP.....		
	③Sacramento, Cal., SN, Woodland, Cal., SN, Sacramento, Cal., WP.....		
ATSF, MET, SN, TS, WP	Routes provided on page 537.....	⑤⑥GN, Portland or Willbridge, Ore., OE, Hillsboro, Salem or West Woodburn, Ore., OE, Portland or Willbridge, Ore.....	GN In Washington
ATSF		⑬GN, Bend, Ore., OT, Wishram, Wash., SP&S, Vancouver, Wash...	GN Index No. 10730
ATSF WP	Routes provided on page 537.....	⑤⑥GN, Portland or Willbridge, Ore., OE, Albany, Ore., OE, Portland or Willbridge, Ore.....	GN Index No. 10733 to 10930
ATSF SN TS WP	Routes provided on page 537.....	⑤⑥GN, Portland or Willbridge, Ore., OE, Albany, Eugene or Salem, Ore., OE, Portland or Willbridge, Ore...	
		⑤⑥GN, Willbridge, Ore.....	OE Index No. 14755

①Applies in connection with transit privileges on Frozen Fruits, or Vegetables at Yuba City, Cal., on SN, as specifically authorized in Item 3250 of PSFB Tariff 264-G, ICC 1620.

③Applies only in connection with transit privileges on Canned Goods at Woodland, Cal., on SN, as specifically authorized in Item 7085 of PSFB Tariff 194-S, ICC 1607.

▲④Applies only in connection with transit privileges on Dairy Products or Packing House Products at Hillsboro, Salem or West Woodburn, Ore., on OE, as specifically authorized in Item 8000 or Items 19065 or 19070, respectively, of NPCFB Tariff 117-B, ICC 935.

~~④Applies only in connection with shipments of Copper Wire stopped at Albany, Ore., on OE, to partly unload under provisions of NPCFB Tariff 63-Q, ICC 942.~~

⑤Applies only in connection with shipments stopped at Albany, Eugene or Salem, Ore., on OE to partly unload under provisions of NPCFB Tariff 63-Q, ICC 942.

⑥Applies only in connection with shipments stopped at Albany, Eugene or Salem, Ore., on OE, to partly unload, or to complete loading, under provisions of NPCFB Tariff 63-Q, ICC 942.

⑫Applies in connection with transit privileges on Frozen Fruits or Vegetables at Yuba City, Cal., on SN, as specifically authorized in Item 3250 of PSFB Tariff 264-G, ICC 1620 or in connection with transit privileges on Canned Goods at Yuba City, Cal., on SN, as specifically authorized in Item 7085 of PSFB Tariff 194-S, ICC 1607.

⑬Applies only in connection with shipments originating Los Angeles Group 17A on ATSF stopped in transit at Vancouver, Wash., on SP&S to partly unload.

⑫Applies only in connection with transit privileges on Iron and Steel at Spokane, Wash., on GN as provided in Section 20 of NPCFB Tariff 117-B, ICC 935.

◆Applies in connection with transit privileges on Dried Beans, Lentils and Peas, at Sutter, Cal., on SN, as specifically authorized in Item 165 of PSFB Tariff 212-D, ICC 1625.

▲Change; no increase or reduction.

⑤Will not apply via Spokane, Washington.

SECTION 6

ROUTING FOR RATES IN SECTIONS 4, 4-A OR 5, APPLICABLE IN CONNECTION WITH WP, VIA BIEBER, CAL., NOT OTHERWISE PROVIDED ON PAGE 537

Routing provided below applies only on shipments accorded transit privileges as specifically authorized in connection with each such route.

(See pages 102 to 119, for points designated by Index Nos.)

ROUTING TO BIEBER, CAL.		ROUTING FROM BIEBER, CAL.	
COLUMN 1			COLUMN 2
FROM Points on	VIA	VIA	TO Points on
ATSF, SN, WP	Routes provided on page 537	⑤⑫GN, Chehalis, Wash., CMSP&P, Hoquiam, CMSP&P, Chehalis, Wash.	GN Index Nos. 11117, 11119
		⑤⑦GN	GN Index Nos. 11355 to 11565
Lines of Carriers party to this Tariff from which routes are provided on page 537.	Routes provided on page 537	⑤⑧GN, Portland, Ore., SP&S, East Portland, Ore., SP&S, Portland, Ore.	GN Index Nos. 10735 to 11565
		⑤①Sacramento, Cal., SN, North Sacramento, Cal., SN, Sacramento, Cal., WP.	ATSF, WP
ATSF	Routes provided on page 537	⑫GN, Bend, Ore., OT, Wishram, Wash.	SP&S Index No. 18040
GN In Washington.	⑤①GN, Portland or Willbridge, Ore., OE, Hillsboro, Salem or West Woodburn, Ore., OE, Portland or Willbridge, Ore., GN	Routes provided on page 537	ATSF, MET, SN, TS, WP
GN Index Nos.: 10745 to 11363	⑤⑫GN, Vancouver, Wash., SP&S, Wishram, Wash., OT, Bend, Ore., GN	Routes provided on page 537	ATSF WP
GN Index Nos.: 10735 to 10995	⑤⑥Willbridge, Ore., OE, Albany, Ore., OE, Willbridge, Ore., GN	Routes provided on page 537	Lines of Carriers party to this Tariff to which routes are provided on page 537.
11355 to 11565	⑤⑦GN		
OE Index No. 14755	⑤⑥Willbridge, Ore., GN	Routes provided on page 537	ATSF, SN, TS, WP

⑤Will not apply via Spokane, Washington.

①Applies only in connection with transit privilege on Sheet Steel Ware at North Sacramento, Cal., on SN as specifically authorized in Item 5175 of PSFB Tariff 194-S, ICC 1607.

②Applies only in connection with transit privileges on Dairy Products or Packing House Products at Hillsboro, Salem or West Woodburn, Ore., on OE, as specifically authorized in Item 8000 or Items 19065 or 19070, respectively, of NPCFB Tariff 117-B, ICC 935.

⑥Applies only in connection with shipments stopped at Albany, Eugene or Salem, Ore., on OE, to partly unload, or to complete loading, under provisions of NPCFB Tariff 63-Q, ICC 942.

⑦Applies only in connection with shipments stopped at Portland, Ore., or at Pelida, Wash., and points north thereof, on GN, which are direcly intermediate, for transit privileges as authorized in tariffs lawfully on file with the ICC.

⑧Applies only in connection with shipments stopped at East Portland, Ore., on SP&S, to partly unload.

⑨Applies only in connection with transit privileges on Canned Goods at Albany, Ore., on OE, as specifically authorized in Item 11630 of NPCFB Tariff 117-B, ICC 935.

⑫Applies only in connection with shipments stopped at Bend, Ore., on OT to partly unload under provisions NPCFB Tariff 63-Q, ICC 942.

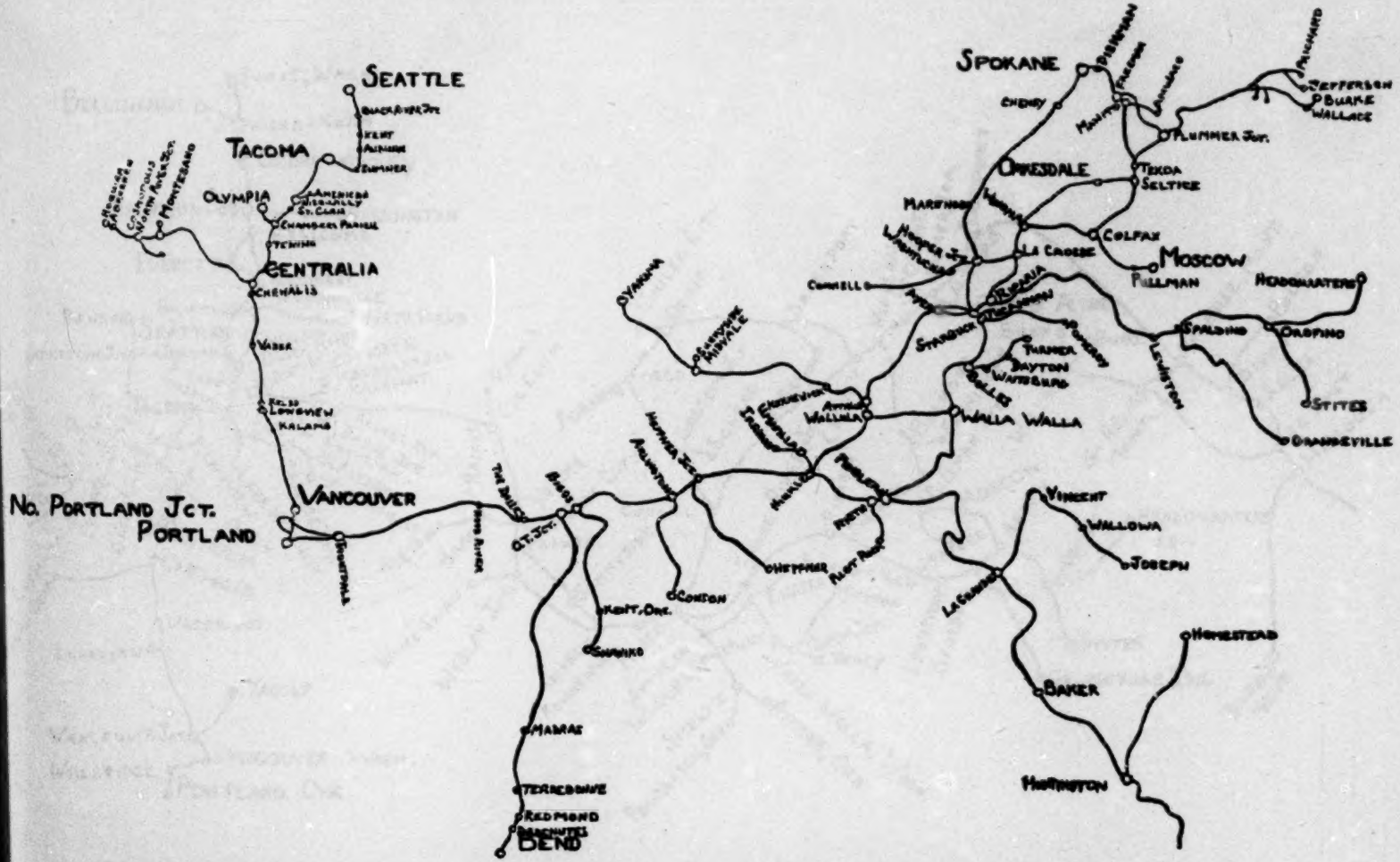
⑭Applies only in connection with shipments originating Los Angeles Group 17A on ATSF stopped in transit at Pasco, Wash., or Kennewick, Wash., on SP&S to partly unload.

⑯Applies only in connection with transit privileges on Iron or Steel Wire at Hoquiam, Wash., on CMSP&P, as specifically authorized in Part D, Item 16350 series of NPCFB Tariff 117-B, ICC 935.

♣Reduction. (CJT-1455)

BEFORE THE INTERSTATE COMMERCE COMMISSION
Exhibit No. 6

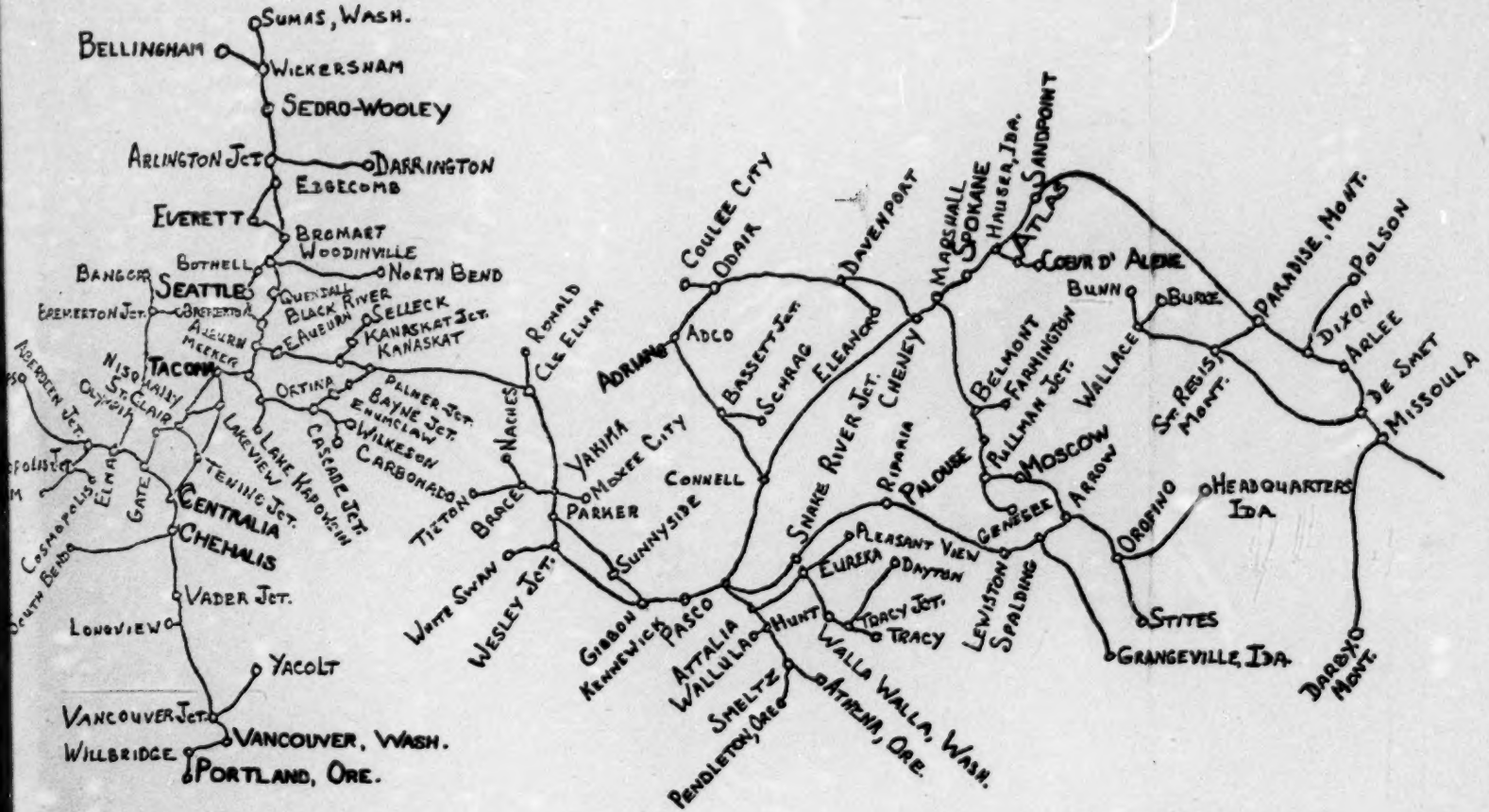
[fol. 508]



Stations designated in red are junction points between Union Pacific and Great Northern Railway in Oregon, Washington and Idaho, affording interchange of carload freight without transfer of lading.

BEFORE THE INTERSTATE COMMERCE COMMISSION
Exhibit No. 7

[fol. 509]



Stations designated in red are junction points between Northern Pacific Railway and Great Northern Railway in Oregon, Washington and Idaho, affording interchange of carload freight without transfer of lading.

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 8

[fol. 5110]

Copy of Page 38 of Southern Pacific Company Freight Tariff 230-K, ICC 4960, containing absorption of Western Pacific's switching charge at Sacramento on Canned Goods moving from Sacramento via SP to points on NP or UP in Oregon, Washington or Idaho.

Not subject to increases provided in Tariff X-175 referred to in Sup. 15 to this tariff.
[R]Not subject to increases provided by Items X-196 and X-206 of this tariff.
[S]Subject to increases provided by Items X-212 and X-223 of this tariff.

ABSORPTION OF SWITCHING CHARGES

SP., when it receives a line haul from or to the following points, will absorb, subject to Item 300, except as noted, switching charges of the lines as provided below, between points within their individual switching limits, published in tariffs lawfully on file with the ICC. or State Commissions. Charges not absorbed will be in addition to the line haul charges.

At	On Traffic Described Below	Will Absorb Switching Charge of	For Switching Such Freight BETWEEN (Except as noted)	For Switching Such Freight AND (Except as noted)	ITEM
Sacramento, Cal.:	Carload traffic moving from (or to) Sacramento, Cal., to (or from) Gridley, Cal.	SN., WP., not to exceed $6.56 per car.	Interchange track with SP.	Industry tracks, private sidings or wharves.	990
	Canned or Preserved Foodstuffs (not cold-pack nor frozen) and other articles moving to stations on NP. or UP. in Ore., Wash. or Ida., under rates published in Items 4837, 4837.8 or 4838, PSFB. Tariff 1-S, ICC. 1352.	WP., not to exceed $6.56 per car.	FROM Industry tracks.	TO Interchange track with SP.	↓ 995
	+Petroleum or Petroleum Products, in tank cars, moving under Column 1-A rates in PSFB Tariff ★252-E, ICC. 1653.	Connecting rail carrier, but not to exceed $6.56 per car.	FROM Industry tracks, private sidings or wharves.	TO Interchange track with SP.	1000
Salem, Ore.:	Carload traffic to or from Salem, Ore., competitive with OE.	OE.—see Note 1 below.	Interchange track with SP.	Industry tracks or private sidings.	1010
San Francisco, Cal.:	Carload traffic to or from San Francisco, Cal., received from or delivered to vessels, when originating at or destined Portland, Ore., and points south thereof, Ogden, Utah, El Paso, Tex., Albuquerque, NM., and points west thereof.	AT&SF (Santa Fe), not to exceed $6.56 per car—see Note 2.	Interchange track with SP.	Wharves served by AT&SF (Santa Fe).	1020
San Francisco, Cal.:	Carload traffic moving from (or to) San Francisco, Cal., to (or from) Gridley, Cal.	AT&SF. (Santa Fe), WP., not to exceed $6.56 per car.	Interchange track with SP.	Industry tracks, private sidings or wharves.	1030

★Change. +Applies only on California intrastate traffic. [R]Change; no increase or reduction. ↓Reduction.

Note 1.—Except as otherwise provided, this company will in no case absorb switching charge (or any portion thereof) of connecting carrier when such absorption results in less net minimum transportation charge (i. e., the charge arrived at by applying the rate or rates applicable to the shipment or shipments in the car from the respective point or points of origin to the respective point or points of destination, and exclusive of switching and other terminal charges) than $35.03 per car.

In event that transportation charges do not permit of the absorption of the entire switching charge as provided above, this company will then absorb only so much of connecting line's switching charge as will leave minimum transportation charge of $35.03 per car.

Note 2.—Whenever it is found necessary to dray freight between depots of SP. and wharves, as described above, charges made therefor will be absorbed by SP.

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 9

...presentative Commodities on which present combination rates applicable via Bieber and Portland ...ence Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through ...tes in effect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

LINE	COMMODITY	FROM	TO	VIA	MILES	PRESENT RATE	PRESENT Min. Wt. (Lbs.)	PRESENT Per Car ($)	PRESENT PCPM (¢)	PRESENT PTPM (Mills)	PROPOSED RATE	PROPOSED Min. Wt. (Lbs.)	PROPOSED Per Car ($)	PROPOSED PCPM (¢)	PROPOSED PTPM (Mill
1	Dried	Johnson,	Oakland, Cal.	NP-GN-WP	1161	(74	100,000	740.00	63.7	12.7	60½	100,000	605.00	52.1	10.4
2	Peas,	Wash.				a(87	80,000	696.00	59.9	15.0	74	80,000	592.00	51.0	12.7
3	Beans,					(97	40,000	388.00	33.4	16.7	84	40,000	336.00	28.9	14.5
4	and			NP-GN-WP	1491	(c 95½	100,000	955.00	64.1	12.8					
5	Lentils					(c109	80,000	872.00	58.5	14.6					
6						(d125	40,000	500.00	33.5	16.8					
7						b(									
8						(113	100,000	1130.00	75.8	15.2	60½	100,000	605.00	40.6	8.1
9						(126	80,000	1008.00	67.6	16.9	74	80,000	592.00	39.7	9.9
10						(136	40,000	544.00	36.5	18.2	84	40,000	336.00	22.5	11.3
11				NP-SP	1324	60½	100,000	605.00	45.7	9.1					
12						e(74	80,000	592.00	44.7	11.2					
13						(84	40,000	336.00	25.4	12.7					
14		Johnson,	Sutter, Cal.	NP-GN-WP-SN	997	f 74	100,000	740.00	74.2	14.8	60½	100,000	605.00	60.7	12.1
15		Wash.		NP-GN-WP-SN	1328	(c 95½	100,000	955.00	71.9	14.4					
16						(c109	80,000	872.00	65.7	16.4					
17						(d115	40,000	460.00	34.6	17.3					
18						g(									
19						(113	100,000	1130.00	85.1	17.0	60½	100,000	605.00	45.6	9.1
20						(-	80,000	-	-	-					
21						(126	40,000	504.00	38.0	19.0					
22				NP-SP-SN	1219	(76	100,000	760.00	62.3	12.5					
23						h(89	80,000	712.00	58.4	14.6					
24						(99	40,000	396.00	32.5	16.2					
25		Moscow,	Oakland, Cal.	GN-WP	1142	(60½	100,000	605.00	53.0	10.6					
26		Idaho				e(74	80,000	592.00	51.8	13.0					
27						(84	40,000	336.00	29.4	14.7					
28		Moscow,	Sutter, Cal.	GN-WP-SN	979	e 60½	100,000	605.00	61.8	12.4					
29		Idaho													

DRIED PEAS

Explanation of Reference Marks

a - Combination of Rates Over Moscow, Ida., (lower than Combination over Portland, Ore. or Seattle, Wash.), Constructed From Following Factors:

Johnson, Wash. To Moscow, Ida.: 13½¢ - 36,000 lbs.) Item 14850, Tariff 2-P, ICC 1001, North Pacific Coast Freight) Bureau, Agent.

Moscow, Ida. To Oakland, Cal.: 60½¢ - 100,000 lbs.) Item 10295, Tariff 1-S, ICC 1352, Pacific Southcoast Freight
74 ¢ - 80,000 lbs.) Bureau, Agent.
84 ¢ - 40,000 lbs.)

b - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Johnson, Wash. To Portland, Ore.: c 35 ¢ - 80,000 lbs.) Item 8160-A, Tariff 2-P, ICC 1001, North Pacific Coast
d 41 ¢ - 40,000 lbs.) Freight Bureau, Agent. Rates published as not subject to) Tariff of Increased Rates and Charges X-223.

52½¢ - 40,000 lbs.) Item 8150-A, Tariff 2-P, ICC 1001, North Pacific Coast) Freight Bureau, Agent.

Portland, Ore. To Oakland, Cal.: 60½¢ - 100,000 lbs.) Rates from Seattle, Wash. as maximum. Item 10295, Tariff
74 ¢ - 80,000 lbs.) 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.
84 ¢ - 40,000 lbs.)

c - Not Subject To Transit Privileges.

d - Not Subject To Transit Privileges at Stations West of the Cascade Mountains, and Only One Transit Privilege at Stations East of the Cascade Mountains.

e - Item 10295, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

f - Combination of Rates Over Moscow, Ida., Constructed From Following Factors:

Johnson, Wash. To Moscow, Ida.: As in (a) above.

Moscow, Ida. To Sutter, Cal.: 60½¢ - 100,000 lbs.) Item 10295, Tariff 1-S, ICC 1352, Pacific Southcoast Freight) Bureau, Agent.

g - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Johnson, Wash. To Portland, Ore.: As in (b) above.

(Continued)

DRIED PEAS (Continued)

Explanation of Reference Marks

g - (Continued): Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Portland, Ore. To Sutter, Cal.:	60½¢ - 100,000 lbs. 74 ¢ - 40,000 lbs.	Rates from Seattle, Wash. as maximum. Apply via Routes in connection with WP via Bieber, Cal. Item 10295, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

h - Combination of Rates Over Marysville, Cal., Constructed From Following Factors:

Johnson, Wash. To Marysville, Cal.:	60½¢ - 100,000 lbs. 74 ¢ - 80,000 lbs. 84 ¢ - 40,000 lbs.	Item 10295, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.
Marysville, Cal. To Sutter, Cal.:	15½¢ - 36,000 lbs.	Class 5 rate per Item 41650, Western Classification 77, ICC 35, Western Classification Committee, Agent; and Item 1268-A, Tariff 255-G, ICC 1637, Pacific Southcoast Freight Bureau, Agent.

Representative Commodities on which present combination rates applicable via Bieber and Portland thence Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.
(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMNS/L:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
						PRESENT					PROPOSED				
I:	COMMOD-	FROM	TO	VIA	MILES	RATE	Min.Wt.	Per Car	PCPM	PTPM	RATE	Min.Wt.	Per Car	PCPM	PTPM
N:	ITY						(Lbs.)	($)	(¢)	(Mills)		(Lbs.)	($)	(¢)	(Mills)
E:															
1:	Beer	Olympia,	San Francisco,	NP-GN-WP	1013	(92‡	80,000	740.00	73.1	18.3	(73	80,000	584.00	57.7	14.4
2:		Wash.	Cal.			((#86					(# 65‡				
3:						a(115‡	60,000	693.00	68.4	22.8	95	60,000	570.00	56.3	12.9
4:						(128‡	40,000	514.00	50.7	25.4	106	40,000	424.00	41.9	20.9
5:				NP-SP	844	(73	80,000	584.00	69.2	17.3					
6:						((#65‡									
7:						b(95	60,000	570.00	67.5	22.5					
8:						(106	40,000	424.00	50.2	25.1					
9:			Turlock, Cal.	NP-GN-WP-TS	967	((100	80,000	800.00	82.7	20.7	(78	80,000	624.00	64.5	16.1
10:						((#90					(# 70				
11:						c(121	60,000	726.00	75.1	25.0	102	60,000	612.00	63.3	21.1
12:						(159	40,000	636.00	65.8	32.9	137	40,000	548.00	56.7	28.3
13:				NP-SP	862	(78	80,000	624.00	72.4	18.1					
14:						((#70									
15:						d(102	60,000	612.00	71.0	23.7					
16:						(137	40,000	548.00	63.6	31.8					
17:			Fresno, Cal.	NP-GN-WP-	1042	((109‡	80,000	876.00	84.1	21.0	(87	80,000	696.00	66.8	16.7
18:				AT&SF		((#98‡					(#78				
19:						e(130‡	60,000	783.00	75.1	25.0	111	60,000	666.00	63.9	21.3
20:						(159‡	40,000	638.00	61.2	30.6	137	40,000	548.00	52.6	26.3
21:				NP-SP	941	(87	80,000	696.00	74.0	18.5					
22:						((#78									
23:						b(111	60,000	666.00	70.8	23.6					
24:						(137	40,000	548.00	58.2	29.1					
25:			Los Angeles,	NP-GN-WP-	1435	((117‡	80,000	940.00	65.5	16.4	(98	80,000	784.00	54.6	13.7
26:			Cal.	AT&SF		((#108‡					(# 88				
27:						f(144‡	60,000	867.00	60.4	20.1	122	60,000	732.00	51.0	17.0
28:						(159‡	40,000	638.00	44.5	22.2	137	40,000	548.00	38.2	19.1
29:				NP-SP	1217	(98	80,000	784.00	64.4	16.1					
30:						((#88									
31:						g(122	60,000	732.00	60.1	20.0					
32:						(137	40,000	548.00	45.0	25.7					
33:					1335	(98	80,000	784.00	58.7	14.7					
34:						((#88									

[illegible] Representative Commodities on which present combination rates applicable via joint through rates in [illegible]thern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in [illegible]fect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

FOLUME 71	2	3	4	5	6	7	8	9	10	11	12	13	14	15
					PRESENT					PROPOSED				
COMMODITY	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mill
Beer	Seattle, Wash.	San Francisco, Cal.	UP-ON-WP	1071	g(97½	80,000	780.00	72.8	18.2	(73	80,000	584.00	54.5	13.6
					(#90					(# 65½				
					h(113½	60,000	681.00	63.6	21.2	95	60,000	570.00	53.2	17.7
					(128½	40,000	514.00	48.0	24.0	106	40,000	424.00	39.6	19.8
			UP-SP	902	(73	80,000	584.00	64.7	16.2					
					b(#65½									
					(95	60,000	570.00	63.2	21.1					
					(106	40,000	424.00	47.0	23.5					
		Turlock, Cal.	UP-ON-WP-TS	1025	i(102	80,000	816.00	79.6	19.9	(78	80,000	624.00	60.9	15.2
					(#94					(# 70				
					j(119	60,000	714.00	69.7	23.2	102	60,000	612.00	59.7	19.9
					(159	40,000	636.00	62.0	31.0	137	40,000	548.00	53.5	26.7
			UP-SP	92[illegible]	(78	80,000	624.00	67.8	17.0					
					d(#70									
					(102	60,000	612.00	66.5	22.2					
					(137	40,000	548.00	59.6	29.8					
		Fresno, Cal.	UP-ON-WP-AT&SF	1100	k(111½	80,000	892.00	81.1	20.3	(87	80,000	696.00	63.3	15.8
					(#102½					(# 78				
					m(128½	60,000	771.00	70.0	23.4	111	60,000	666.00	60.5	20.2
					(159½	40,000	638.00	53.0	29.0	137	40,000	548.00	49.8	24.9
			UP-SP	999	(87	80,000	696.00	69.7	17.4					
					b(#78									
					(111	60,000	666.00	66.7	22.2					
					(137	40,000	548.00	54.9	27.4					
		Los Angeles, Cal.	UP-ON-WP-AT&SF	1493	n(122½	80,000	980.00	65.6	16.4	(98	80,000	784.00	52.5	13.1
					(#112½					(# 88				
					p(142½	60,000	855.00	57.3	19.1	122	60,000	732.00	49.0	16.3
					(159½	40,000	638.00	42.7	21.4	137	40,000	548.00	36.7	18.4
			UP-SP	1275	(98	80,000	784.00	61.5	15.4					
					b(#88									
					(122	60,000	732.00	57.4	19.1					
					(137	40,000	548.00	43.0	21.5					

Representative Commodities on which present combination rates applicable via Bieber and Portland thence Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 222 increase)

COLUMNS/1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
L:					PRESENT					PROPOSED				
I:COMMOD-	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mill
N:ITY														
E:														
1: Beer	Seattle, Wash.	Los Angeles, Cal.	UP-SP-AT&SF	1393	((98	80,000	784.00	56.3	14.1					
2:					b((88									
3:					(122	60,000	732.00	52.5	17.5					
4:					(137	40,000	548.00	39.3	19.7					

Explanation of Reference Marks

- Applies on Weight in Excess of 80,000 lbs.

a - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Olympia, Wash. To Portland, Ore.:	(22½¢ - 80,000 lbs. (20¢ - Excess Over 80,000 lbs. (33½¢ - 40,000 lbs. (37½¢ - 30,000 lbs.	) Item 4710, Tariff 1-R, ICC 1019, North Pacific Coast Freight Bureau, Agent.
Portland, Ore. To San Francisco, Cal.:	(70 ¢ - 80,000 lbs. (65½¢ - Excess Over 80,000 lbs. (82 ¢ - 60,000 lbs. (95 ¢ - 40,000 lbs.	) Item 4670-K, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent. Rates published as not subject to Increases provided in Tariff of Increased Rates and Charges X-223.

b - Item 4670-K, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

c - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Olympia, Wash. To Portland, Ore.:	As in (a) above.	
Portland, Ore. To Turlock, Cal.:	(78¢ - 80,000 lbs. (70¢ - Excess Over 80,000 lbs. (88¢ - 60,000 lbs. (126¢ - 40,000 lbs.	) Item 4672-D, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

d - Item 4672-D, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

e - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Olympia, Wash. To Portland, Ore.:	As in (a) above.	
Portland, Ore. To Fresno, Cal.:	(87¢ - 80,000 lbs. (78¢ - Excess Over 80,000 lbs. (97¢ - 60,000 lbs. (126¢ - 40,000 lbs.	) Item 4670-K, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent. Rates published as not subject to Increases provided in Tariff of Increased Rates and Charges X-223.

(Continued)

Explanation of Reference Marks (Continued)

f - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Olympia, Wash. To Portland, Ore.: As in (a) above.

Portland, Ore. To Los Angeles, Cal.: (95¢ - 80,000 lbs. / 88¢ - Excess Over 80,000 lbs.) / (111¢ - 60,000 lbs. / 126¢ - 40,000 lbs.) Item 4670-K, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent. Rates published as not subject to Increases provided in Tariff of Increased Rates and Charges X-223.

g - Combination of Rates Over Tacoma, Wash., Constructed From Following Factors:

Seattle, Wash. To Tacoma, Wash.: 24½¢ - 30,000 lbs.) Item 4710, Tariff 1-R, ICC 1019, North Pacific Coast Freight Bureau, Agent.

Tacoma, Wash. To San Francisco, Cal.: (73 ¢ - 80,000 lbs. / 65½¢ - Excess Over 80,000 lbs.) / (95 ¢ - 60,000 lbs. / (106 ¢ - 40,000 lbs.) Item 4670-K, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent. Rates published as not subject to Increases provided in Tariff of Increased Rates and Charges X-223.

h - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Seattle, Wash. To Portland, Ore.: (31½¢ - 60,000 lbs. / (33½¢ - 40,000 lbs. / (37½¢ - 30,000 lbs.) Item 4710, Tariff 1-R, ICC 1019, North Pacific Coast Freight Bureau, Agent.

Portland, Ore. To San Francisco, Cal.: As in (a) above.

i - Combination of Rates Over Tacoma, Wash., Constructed From Following Factors:

Seattle, Wash. To Tacoma, Wash.: As in (g) above.

Tacoma, Wash. To Turlock, Cal.: (78¢ - 80,000 lbs. / 70¢ - Excess Over 80,000 lbs.) / (102¢ - 60,000 lbs. / (137¢ - 40,000 lbs.) Item 4672-D, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

j - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Seattle, Wash. To Portland, Ore.: As in (h) above.

Portland, Ore. To Turlock, Cal.: As in (c) above.

(Continued)

3006 [fol. 519]

Explanation of Reference Marks (Continued)

l - Combination of Rates Over Tacoma, Wash., Constructed From Following Factors:

Seattle, Wash. To Tacoma, Wash.: As in (g) above.

Tacoma, Wash. To Fresno, Cal. : (87¢ - 80,000 lbs.) Item 4670-K, Tariff 1-S, ICC 1352, Pacific South-
(78¢ - Excess Over 80,000 lbs.) coast Freight Bureau, Agent. Rates published as
(111¢ - 60,000 lbs.) not subject to Increases provided in Tariff of
(137¢ - 40,000 lbs.) Increased Rates and Charges X-223.

m - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Seattle, Wash. To Portland, Ore.: As in (h) above.

Portland, Ore. To Fresno, Cal. : As in (e) above.

n - Combination of Rates Over Tacoma, Wash., Constructed From Following Factors:

Seattle, Wash. To Tacoma, Wash.: As in (g) above.

Tacoma, Wash. To Los Angeles, Cal.: (98¢ - 80,000 lbs.) Item 4670-K, Tariff 1-S, ICC 1352, Pacific Sout
(88¢ - Excess Over 80,000 lbs.) coast Freight Bureau, Agent. Rates published a
(122¢ - 60,000 lbs.) not subject to Increases provided in Tariff of
(137¢ - 40,000 lbs.) Increased Rates and Charges X-223.

p - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Seattle, Wash. To Portland, Ore.: As in (h) above.

Portland, Ore. To Los Angeles, Cal.: As in (f) above.

Representative Commodities on which present combination rates applicable via Bieber and Portland thence Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMNS/I:	2	3	4	5	6	7	8	9	10	11	12	13	14	15
L: I:COMMOD- N:ITY E:	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills
1:Brewers	West	Olympia,	SN-WP-	874	(122	100,000	1220.00	139.6	27.9	68	100,000	680.00	77.8	15.6
2:Rice	Sacra-	Wash.	GN-NP		a(127	60,000	762.00	87.2	29.1	73	60,000	438.00	50.1	16.7
3:	mento,				(132	40,000	528.00	60.4	30.2	78	40,000	312.00	35.7	17.8
4:	Cal.		RL-SP-NP	777	(68	100,000	680.00	87.5	17.5					
5:					b(73	60,000	438.00	56.4	18.8					
6:					(78	40,000	312.00	40.2	20.1					
7:			SN-SP-NP	777	o(69	100,000	690.00	88.8	17.8					
8:					(74	60,000	444.00	57.2	19.0					
9:			SN-WP-GN-	867	(122	100,000	1220.00	140.7	28.1	68	100,000	680.00	78.4	15.7
10:			UP		a(127	60,000	762.00	87.9	29.3	73	60,000	438.00	50.5	16.8
11:					(132	40,000	528.00	60.9	30.4	78	40,000	312.00	36.0	18.0
12:			RL-SP-UP	770	(68	100,000	680.00	88.3	17.7					
13:					b(73	60,000	438.00	56.9	19.0					
14:					(78	40,000	312.00	40.5	20.3					
15:			SN-SP-UP	770	o(69	100,000	690.00	89.6	17.9					
16:					(74	60,000	444.00	57.7	19.2					
17:	West	Seattle,	SN-WP-GN	913	(68	100,000	680.00	74.5	14.9					
18:	Sacra-	Wash.			b(73	60,000	438.00	48.0	16.0					
19:	mento,				(78	40,000	312.00	34.2	17.1					
20:	Cal.		RL-SP-NP	834	(68	100,000	680.00	81.5	16.3					
21:					b(73	60,000	438.00	52.5	17.5					
22:					(78	40,000	312.00	37.4	18.7					
23:			SN-SP-NP	834	d(69	100,000	690.00	82.7	16.5					
24:					(74	60,000	444.00	53.2	17.7					
25:			RL-SP-UP	835	(68	100,000	680.00	81.4	16.3					
26:					b(73	60,000	438.00	52.5	17.5					
27:					(74	40,000	312.00	37.4	18.7					
28:			SN-SP-UP	835	a(69	100,000	690.00	82.6	16.5					

Explanation of Reference Marks

a - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

West Sacramento, Cal. To Portland, Ore.: 68¢ - 100,000 lbs.) Item 9390-Z, Tariff 1-S, ICC 1352, Pacific Southcoast
73¢ - 60,000 lbs.) Freight Bureau, Agent.
78¢ - 40,000 lbs.)

Portland, Ore. To Olympia, Wash.: 54½¢ - 40,000 lbs.) Item 6200, Tariff 1-H, ICC 1019, North Pacific Coast
) Freight Bureau, Agent.

b - Item 9390-Z, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

c - Combination of Rates Over Sacramento, Cal., Constructed From Following Factors:

West Sacramento, Cal. To Sacramento, Cal.: 1½¢ - 60,000 lbs.) Proportional Rate, Item 5710, Tariff 244-D, ICC 1535,
) Pacific Southcoast Freight Bureau, Agent.

Sacramento, Cal. To Olympia, Wash.: 68¢ - 100,000 lbs.) Item 9390-Z, Tariff 1-S, ICC 1352, Pacific Southcoast
73¢ - 60,000 lbs.) Freight Bureau, Agent.
78¢ - 40,000 lbs.)

d - Combination of Rates Over Sacramento, Cal., Constructed From Following Factors:

West Sacramento, Cal. To Sacramento, Cal.: As in (c) above.

Sacramento, Cal. To Seattle, Wash.: 68¢ - 100,000 lbs.) Item 9390-Z, Tariff 1-S, ICC 1352, Pacific Southcoast
73¢ - 60,000 lbs.) Freight Bureau, Agent.
78¢ - 40,000 lbs.)

Representative Commodities on which present combination rates applicable via Bieber and Portland thence Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.
(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMNS/1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
L:					PRESENT					PROPOSED				
I:COMMOD-	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)
N:ITY														
E:														
1:Canned	Sacra-	Bellevue,	WP-GN-NP	934	a(87	60,000	522.00	55.9	18.6	73	60,000	438.00	46.9	15.6
2:Goods	mento,	Washington			(102	40,000	408.00	43.7	21.8	88	40,000	352.00	37.7	18.8
3: (Not	Cal.		SP-NP	836	b(73	60,000	438.00	52.4	17.5					
4: Cold					(88	40,000	352.00	42.1	21.1					
5: Pack	Sacra-	Yakima,	WP-GN-NP	1048	a(87	60,000	522.00	49.8	16.6	73	60,000	438.00	41.8	13.9
6: Nor	mento,	Wash.			(102	40,000	408.00	38.9	19.5	88	40,000	352.00	33.6	16.8
7:Frozen)	Cal.		SP-NP	951	b(73	60,000	438.00	46.1	15.4					
8:					(88	40,000	352.00	37.0	18.5					
9:			WP-GN-UP	1063	a(87	60,000	522.00	49.1	16.4	73	60,000	438.00	41.2	13.7
10:					(102	40,000	408.00	38.4	19.2	88	40,000	352.00	33.1	16.6
11:			SP-UP	966	b(73	60,000	438.00	45.3	15.1					
12:					(88	40,000	352.00	36.4	18.2					
13:	Sacra-	Walla Walla,	WP-GN-NP	1200	d(87	60,000	522.00	43.5	14.5	73	60,000	438.00	36.5	12.2
14:	mento,	Wash.			(102	40,000	408.00	34.0	17.0	88	40,000	352.00	29.3	14.7
15:	Cal.		SP-NP	1103	b(73	60,000	438.00	39.7	13.2					
16:					(88	40,000	352.00	31.9	16.0					
17:			WP-GN-UP	993	d(87	60,000	522.00	52.6	17.5	73	60,000	438.00	44.1	14.7
18:					(102	40,000	408.00	41.1	20.5	88	40,000	352.00	35.4	17.7
19:			SP-UP	896	b(73	60,000	438.00	48.9	16.3					
20:					(88	40,000	352.00	39.3	19.6					
21:	Sacra-	Spokane,	WP-GN	914	b(78	60,000	468.00	51.2	17.1					
22:	mento,	Wash.			(93	40,000	372.00	40.7	20.4					
23:	Cal.		WP-GN-NP	1282	e(104	60,000	624.00	48.7	16.2	78	60,000	468.00	36.5	12.2
24:					(119	40,000	476.00	37.1	18.6	93	40,000	372.00	29.0	14.5
25:			SP-NP	1184	b(78	60,000	468.00	39.5	13.2					
26:					(93	40,000	372.00	31.4	15.7					
27:			WP-GN-UP	1119	e(104	60,000	624.00	55.8	18.6	78	60,000	468.00	41.8	13.9
28:					(119	40,000	476.00	42.5	21.3	93	40,000	372.00	33.2	16.6
29:			SP-UP	1022	b(78	60,000	468.00	45.8	15.3					
30:					(82	40,000	328.00	32.1	16.0					
31:	Sacra-	The Dalles,	WP-GN-UP	833	r(82	60,000	492.00	59.0	19.6	384	60,000	331.00	42.1	14.0
32:	mento,	Ore.			(82	40,000	328.00	42.1	21.0	74	40,000	296.00	35.5	17.8

Northern Pacific Railway or Union Pacific Railroad Company are concurred with joint through
rates in effect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMNS/1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
					PRESENT					PROPOSED				
COMMODITY	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)
1 Canned	Sacra-	Portland,	WP-GN	749	b(58½	60,000	351.00	46.9	15.6					
2 Goods	mento,	Ore.			(74	40,000	296.00	39.5	19.8					
3 (Not	Cal.		SP	652	b(58½	60,000	351.00	53.8	17.9					
4 Cold					(74	40,000	296.00	45.4	22.7					
5 Pack	Thorn-	Bellevue,	WP-GN-NP	958	h(87	60,000	522.00	54.5	18.2	73	60,000	438.00	45.7	15.2
6 Nor	ton,	Wash.			(102	40,000	408.00	42.6	21.3	88	40,000	352.00	36.7	18.4
7 Frozen)	Cal.		WP-SP-NP	899	i(86	60,000	516.00	57.4	19.1					
8					(101	40,000	404.00	44.9	22.5					
9	Thorn-	Yakima,	WP-GN-NP	1073	j(87	60,000	522.00	48.6	16.2	73	60,000	438.00	40.8	13.6
10	ton,	Wash.			(102	40,000	408.00	38.0	19.0	88	40,000	352.00	32.8	16.4
11	Cal.		WP-SP-NP	1014	k(86	60,000	516.00	50.9	17.0					
12					(101	40,000	404.00	39.8	19.9					
13			WP-GN-UP	1088	j(87	60,000	522.00	48.0	16.0	73	60,000	438.00	40.3	13.4
14					(102	40,000	408.00	37.5	18.7	88	40,000	352.00	32.4	16.2
15			WP-SP-UP	1028	k(86	60,000	516.00	50.2	16.7					
16					(101	40,000	404.00	39.3	19.6					
17	Thorn-	Walla Walla,	WP-GN-NP	1225	m(87	60,000	522.00	42.6	14.2	73	60,000	438.00	35.8	11.9
18	ton,	Wash.			(102	40,000	408.00	33.3	16.7	88	40,000	352.00	28.7	14.4
19			WP-SP-NP	1165	n(86	60,000	516.00	44.3	14.8					
20					(101	40,000	404.00	34.7	17.3					
21			WP-GN-UP	1018	m(87	60,000	522.00	51.3	17.1	73	60,000	438.00	43.0	14.3
22					(102	40,000	408.00	40.1	20.0	88	40,000	352.00	34.6	17.3
23			WP-SP-UP	958	n(86	60,000	516.00	53.9	18.0					
24					(101	40,000	404.00	42.2	21.1					
25	Thorn-	Spokane,	WP-GN	939	b(78	60,000	468.00	49.8	16.6					
26	ton,	Wash.			(93	40,000	372.00	39.6	19.8					
27	Cal.		WP-GN-NP	1306	p(104	60,000	624.00	47.8	15.9	78	60,000	468.00	35.8	11.9
28					(119	40,000	476.00	36.4	18.2	93	40,000	372.00	28.5	14.2
29			WP-SP-NP	1247	q(91	60,000	546.00	43.8	14.6					
30					(106	40,000	424.00	34.0	17.0					
31			WP-GN-UP	1144	p(104	60,000	624.00	54.5	18.2	78	60,000	468.00	40.9	13.6
32					(119	40,000	476.00	41.6	20.8	93	40,000	372.00	32.5	16.3
33			WP-SP-UP	1084	q(91	60,000	546.00	50.4	16.8					
34					(106	40,000	424.00	39.1	19.6					
35	Thorn-	The Dalles,	WP-GN-UP	858	r(84	60,000	504.00	58.7	19.6	58½	60,000	351.00	40.9	13.6
36					(99	40,000	396.00	46.2	23.1	74	40,000	296.00	34.5	17.2

Representative Commodities on which present combination rates applicable via Bieber and Portland thence Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.
(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMNS/1:	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1:					PRESENT					PROPOSED				
I:COMMOD-	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)
N:ITY														
E:														
1:Canned	Thorn-	The Dalles,	WP-SP-UP	798	a(72	60,000	432.00	54.1	18.0					
2:Goods	ton,	Ore.			(87	40,000	348.00	43.6	21.8					
3:(Not	Cal.													
4: Cold	Thorn-	Portland,	WP-ON	774	b(58	60,000	351.00	45.3	15.1					
5: Pack	ton,	Ore.			(74	40,000	296.00	38.2	19.1					
6: Nor	Cal.													
7:Frozen)	McHenry,	Bellevue,	TS-WP-ON-	1065	t(90	60,000	540.00	53.7	17.9	76	60,000	456.00	45.4	15.1
8:	Cal.	Wash.	NP		(105	40,000	420.00	41.8	20.9	91	40,000	364.00	36.2	18.1
9:			TS-SP-NP	905	u(86	60,000	516.00	57.0	19.0					
10:					(101	40,000	404.00	44.6	22.3					
11:	Modesto:	Bellevue,	SP-NP	908	v(76	60,000	456.00	50.2	16.7					
12:	Cal.	Wash.			(91	40,000	364.00	40.1	20.0					
13:	McHenry:	Yakima, Wash.	TS-WP-ON-	1119	w(90	60,000	540.00	48.3	16.1	76	60,000	456.00	40.8	13.6
14:	Cal.		NP		(105	40,000	420.00	37.5	18.8	91	40,000	364.00	32.5	16.3
15:			TS-SP-NP	1019	x(86	60,000	516.00	50.6	16.9					
16:					(101	40,000	404.00	39.6	19.8					
17:			TS-WP-ON-	1134	w(90	60,000	540.00	47.6	15.9	76	60,000	456.00	40.2	13.4
18:			UP		(105	40,000	420.00	37.0	18.5	91	40,000	364.00	32.1	16.0
19:			TS-SP-UP	1034	x(86	60,000	516.00	49.9	16.6					
20:					(101	40,000	404.00	39.1	19.5					
21:	Modesto:	Yakima, Wash.	SP-NP	1023	v(76	60,000	456.00	44.6	14.9					
22:	Cal.				(91	40,000	364.00	35.6	17.8					
23:			SP-UP	1038	v(76	60,000	456.00	43.9	14.6					
24:					(91	40,000	364.00	35.1	17.5					
25:	McHenry:	Walla Walla,	TS-WP-ON-	1271	y(90	60,000	540.00	42.5	14.2	76	60,000	456.00	35.9	12.0
26:	Cal.	Wash.	NP		(105	40,000	420.00	33.0	16.5	91	40,000	364.00	28.6	14.3
27:			TS-SP-NP	1171	z(86	60,000	516.00	44.1	14.7					
28:					(101	40,000	404.00	34.5	17.3					
29:			TS-WP-ON-	1064	y(90	60,000	540.00	50.8	16.9	76	60,000	456.00	42.9	14.3
30:			UP		(105	40,000	420.00	39.5	19.7	91	40,000	364.00	34.2	17.1
31:			TS-SP-UP	964	z(86	60,000	516.00	53.5	17.8					
32:					(101	40,000	404.00	41.9	21.0					
33:	Modesto:	Walla Walla,	SP-NP	1175	v(76	60,000	456.00	38.8	12.9					
34:	Cal.	Wash.			(91	40,000	364.00	31.0	15.5					
35:			SP-UP	1188	v(76	60,000	456.00	38.4	12.8					
36:					(91	40,000	364.00	30.6	15.3					

...Southern Pacific Railway or Union Pacific Railroad Company are compared with joint through ...s in effect via defendant's routes with the Southern Pacific Company via Portland.
(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COMMODITY	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
						PRESENT					PROPOSED				
	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car: ($)	PCPM: (¢)	PTPM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car: ($)	PCPM: (¢)	PTPM (Mills)
1: Canned	McHenry	Spokane,	TS-WP-ON	985	aa	81	60,000	486.00	49.3	16.4					
						96	40,000	384.00	39.0	19.5					
2: Goods	Cal.	Wash.													
3: (Not			TS-WP-ON-	1353	bb	107	60,000	642.00	47.5	15.8	81	60,000	486.00	35.9	12.0
4: Cold			NP			122	40,000	488.00	36.1	18.0	96	40,000	384.00	28.4	14.2
5: Pack			TS-SP-NP	1253	cc	91	60,000	546.00	43.6	14.5					
6: Nor						106	40,000	424.00	33.8	16.9					
7: Frozen)			TS-WP-ON	1190	bb	107	60,000	642.00	53.9	18.0	81	60,000	486.00	40.8	13.6
			UP			122	40,000	488.00	41.0	20.5	96	40,000	384.00	32.3	16.1
8:			TS-SP-UP	1090	cc	91	60,000	546.00	50.1	16.7					
9:						106	40,000	424.00	38.9	19.4					
10:															
11:	Modesto:	Spokane,	TS-WP-ON	991	v	81	60,000	486.00	49.0	16.3					
12:	Cal.	Wash.				96	40,000	384.00	38.7	19.4					
13:			SP-NP	1256	v	81	60,000	486.00	38.7	12.9					
14:						96	40,000	384.00	30.6	15.3					
15:			SP-UP	1094	v	81	60,000	486.00	44.4	14.8					
16:						96	40,000	384.00	35.1	17.6					
17:	McHenry:	The Dalles,	TS-WP-ON-	904	dd	87	60,000	522.00	57.7	19.2	61	60,000	369.00	40.8	13.6
18:	Cal.	Ore.	UP			102	40,000	408.00	45.1	22.6	77	40,000	308.00	34.1	17.0
19:			TS-SP-UP	804	ee	72	60,000	432.00	53.7	17.9					
20:						87	40,000	348.00	43.3	21.6					
21:	Modesto:	The Dalles,	SP-UP	808	ff	61	60,000	369.00	45.7	15.2					
22:	Cal.	Ore.				77	40,000	308.00	38.1	19.1					
23:	McHenry:	Portland,	TS-WP-ON	820	aa	61	60,000	369.00	45.0	15.0					
24:	Cal.	Ore.				77	40,000	308.00	37.6	18.8					
25:			TS-SP	720	ee	72	60,000	432.00	60.0	20.0					
26:						87	40,000	348.00	48.3	24.2					
27:	Modesto:	Portland,	TS-WP-ON	826	v	61	60,000	369.00	44.7	14.9					
28:	Cal.	Ore.				77	40,000	308.00	37.3	18.6					
29:			SP	724	v	61	60,000	369.00	51.0	17.0					
30:						77	40,000	308.00	42.5	21.3					
31:	San	Bellevue,	WP-ON-NP	1072	hh	87	60,000	522.00	48.7	16.2	73	60,000	438.00	40.9	13.6
32:	Francisco,	Wash.				102	40,000	408.00	38.1	19.0	88	40,000	352.00	32.8	16.4
33:	Cal.		SP-NP	904	b	73	60,000	438.00	48.5	16.2					
34:						88	40,000	352.00	38.9	19.5					

CANNED GOODS

Explanation of Reference Marks (Page 1)

a - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Sacramento, Cal. to Portland, Ore.: 58½¢ - 60,000 lbs.) Item 4837-0, Tariff 1-S, ICC 1352, Pacific Southcoast
74 ¢ - 40,000 lbs.) Freight Bureau, Agent.

Portland, Ore. to Bellevue, Wash.: 28½¢ - 40,000 lbs.) Item 1885, Tariff 1-R, ICC 1019, North Pacific Coast Freight
) Bureau, Agent. (Bellevue takes Seattle basis of rates, per
) Item 430).

b - Item 4837-0, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

c - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Sacramento, Cal. to Portland, Ore.: As in (a) above.

Portland, Ore. to Yakima, Wash.: 28½¢ - 40,000 lbs.) Item 5110, Tariff 2-P, ICC 1001, North Pacific Coast Freight
) Bureau, Agent.

d - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Sacramento, Cal. to Portland, Ore.: As in (a) above.

Portland, Ore. to Walla Walla, Wash.: 28½¢ - 40,000 lbs.) Item 5110, Tariff 2-P, ICC 1001, North Pacific Coast Freight
) Bureau, Agent.

e - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Sacramento, Cal. to Portland, Ore.: As in (a) above.

Portland, Ore. to Spokane, Wash.: 45½¢ - 40,000 lbs.) Item 5110, Tariff 2-P, ICC 1001, North Pacific Coast Freight
) Bureau, Agent.

f - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Sacramento, Cal. to Portland, Ore.: As in (a) above.

Portland, Ore. to The Dalles, Ore.: 25½¢ - 40,000 lbs.) Item 5110, Tariff 2-P, ICC 1001, North Pacific Coast Freight

- Item 4838-P, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

- Combination of Rates Over Portland, Ore., Constructed From Following Factors:

  Thornton, Cal. to Portland, Ore.: 58½¢ - 60,000 lbs.) Item 4837-0, Tariff 1-S, ICC 1352, Pacific Southcoast Freight
  74 ¢ - 40,000 lbs.) Bureau, Agent.

  Portland, Ore. to Bellevue, Wash.: As in (a) above.

i - Combination of Rates Over Stockton, Cal., Constructed From Following Factors:

  Thornton, Cal. to Stockton, Cal.: 13½¢ - 36,000 lbs.) Item 3505, Tariff 300, ICC 1439, Pacific Southcoast Freight Bureau, Agent.

  Stockton, Cal. to Bellevue, Wash.: 73 ¢ - 60,000 lbs.) Item 4837-0, Tariff 1-S, ICC 1352, Pacific Southcoast Freight
  88 ¢ - 40,000 lbs.) Bureau, Agent.

j - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

  Thornton, Cal. to Portland, Ore.: As in (h) above.

  Portland, Ore. to Yakima, Wash.: As in (c) above.

k - Combination of Rates Over Stockton, Cal., Constructed From Following Factors:

  Thornton, Cal. to Stockton, Cal.: As in (i) above.

  Stockton, Cal. to Yakima, Wash.: 73¢ - 60,000 lbs.) Item 4837-0, Tariff 1-S, ICC 1352, Pacific Southcoast Freight
  88¢ - 40,000 lbs.) Bureau, Agent.

m - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

  Thornton, Cal. to Portland, Ore.: As in (h) above.

  Portland, Ore. to Walla Walla, Wash.: As in (d) above.

n - Combination of Rates Over Stockton, Cal., Constructed From Following Factors:

  Thornton, Cal. to Stockton, Cal.: As in (i) above.

  Stockton, Cal. to Walla Walla, Wash.: 73¢ - 60,000 lbs.) Item 4837-0, Tariff 1-S, ICC 1352, Pacific Southcoast Freight
  88¢ - 40,000 lbs.) Bureau, Agent.

CANNED GOODS

Explanation of Reference Marks (Page 3, Continued)

p - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Thornton, Cal. to Portland, Ore.: As in (h) above.

Portland, Ore. to Spokane, Wash.: As in (e) above.

q - Combination of Rates Over Stockton, Cal., Constructed From Following Factors:

Thornton, Cal. to Stockton, Cal.: As in (i) above.

Stockton, Cal. to Spokane, Wash.: 78¢ - 60,000 lbs.) Item 4837-0, Tariff 1-S, ICC 1352, Pacific Southcoast Freight
93¢ - 40,000 lbs.) Bureau, Agent.

r - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Thornton, Cal. to Portland, Ore.: As in (h) above.

Portland, Ore. to The Dalles, Ore.: As in (f) above.

s - Combination of Rates Over Stockton, Cal., Constructed From Following Factors:

Thornton, Cal. to Stockton, Cal.: As in (i) above.

Stockton, Cal. to The Dalles, Ore.: 58½¢ - 60,000 lbs.) Item 4838-P, Tariff 1-S, ICC 1352, Pacific Southcoast Freight
74 ¢ - 40,000 lbs.) Bureau, Agent.

t - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

McHenry, Cal. to Portland, Ore.: 61½¢ - 60,000 lbs.) Rates From Modesto, Cal. as Maximum, Item 4845-U, Tariff 1-S,
77 ¢ - 40,000 lbs.) ICC 1352, Pacific Southcoast Freight Bureau, Agent.

Portland, Ore. to Bellevue, Wash.: As in (a) above.

u - Combination of Rates Over Stockton, Cal., Constructed From Following Factors:

McHenry, Cal. to Stockton, Cal.: 13½¢ - 36,000 lbs.) Item 3570, Tariff 300, ICC 1439, Pacific Southcoast Freight
Bureau, Agent.

Stockton, Cal. to Bellevue, Wash.: As in (i) above.

- Item 4845-U, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

w - Combination of Rates Over Portland, Ore., Constructed From Following Factors:
McHenry, Cal. to Portland, Ore.: As in (t) above.
Portland, Ore. to Yakima, Wash.: As in (c) above.

x - Combination of Rates Over Stockton, Cal., Constructed From Following Factors:
McHenry, Cal. to Stockton, Cal.: As in (u) above.
Stockton, Cal. to Yakima, Wash.: As in (k) above.

y - Combination of Rates Over Portland, Ore., Constructed From Following Factors:
McHenry, Cal. to Portland, Ore.: As in (t) above.
Portland, Ore. to Walla Walla, Wash.: As in (d) above.

z - Combination of Rates Over Stockton, Cal., Constructed From Following Factors:
McHenry, Cal. to Stockton, Cal.: As in (u) above.
Stockton, Cal. to Walla Walla, Wash.: As in (n) above.

aa - Rates From Modesto, Cal. as Maximum, Item 4845-U, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

bb - Combination of Rates Over Portland, Ore., Constructed From Following Factors:
McHenry, Cal. to Portland, Ore.: As in (t) above.
Portland, Ore. to Spokane, Wash.: As in (e) above.

cc - Combination of Rates Over Stockton, Cal., Constructed From Following Factors:
McHenry, Cal. to Stockton, Cal.: As in (u) above.
Stockton, Cal. to Spokane, Wash.: As in (q) above.

dd - Combination of Rates Over Portland, Ore., Constructed From Following Factors:
McHenry, Cal. to Portland, Ore.: As in (t) above.
Portland, Ore. to The Dalles, Ore.: As in (f) above.

CANNED GOODS

Explanation of Reference Marks (Page 5, Continued)

ee - Combination of Rates Over Stockton, Cal., Constructed From Following Factors:

McHenry, Cal. to Stockton, Cal.: As in (u) above.

Stockton, Cal. to The Dalles, Ore.: As in (s) above.

ff - Rates to Bend, Ore. as Maximum, Item 4850-Q, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

gg - Combination of Rates Over Stockton, Cal., Constructed From Following Factors:

McHenry, Cal. to Stockton, Cal.: As in (u) above.

Stockton, Cal. to Portland, Ore.: 58½¢ - 60,000 lbs.) Item 4837-0, Tariff 1-S, ICC 1352, Pacific Southcoast Freight
74 ¢ - 40,000 lbs.) Bureau, Agent.

hh - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

San Francisco, Cal. to Portland, Ore.: 58½¢ - 60,000 lbs.) Item 4837-0, Tariff 1-S, ICC 1352, Pacific Southcoast Freig
74 ¢ - 40,000 lbs.) Bureau, Agent.

Portland, Ore. to Bellevue, Wash.: As in (a) above.

[illegible] Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMNS/1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
					PRESENT					PROPOSED				
LINE COMMODITY	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)
1 Flour	Pendleton, Ore.	San Francisco, Cal.	UP-GN-WP	1102	a 85½	60,000	513.00	46.6	15.5	67½	60,000	405.00	36.8	12.3
2			UP-SP	934	b 67½	60,000	405.00	43.4	14.5					
3		Los Angeles, Cal.	UP-GN-WP-AT&SF	1524	c 117	60,000	702.00	46.1	15.4	99	60,000	594.00	39.0	13.0
4			UP-SP	1307	d 99	60,000	594.00	45.4	15.1					
5			UP-SP-ATSF	1425	d 99	60,000	594.00	41.7	13.9					
6														
7	Dayton, Wash.	San Francisco, Cal.	NP-GN-WP	1373	e 87½	60,000	525.00	38.2	12.7	67½	60,000	405.00	29.5	9.8
8			NP-SP	1205	f 67½	60,000	405.00	33.6	11.2					
9			UP-GN-WP	1169	g 87½	60,000	525.00	44.9	15.0	67½	60,000	405.00	34.6	11.5
10			UP-SP	1001	f 67½	60,000	405.00	40.5	13.5					
11	Dayton, Wash.	Los Angeles, Cal.	NP-GN-WP-ATSF	1795	h 119	60,000	714.00	39.8	13.3	99	60,000	594.00	33.1	11.0
12			NP-SP	1578	i 99	60,000	594.00	37.6	12.5					
13			NP-SP-ATSF	1696	i 99	60,000	594.00	35.0	11.7					
14														
15			UP-GN-WP-ATSF	1592	j 119	60,000	714.00	44.8	14.9	99	60,000	594.00	37.3	12.4
16			UP-SP	1374	i 99	60,000	594.00	43.2	14.4					
17			UP-SP-ATSF	1492	i 99	60,000	594.00	39.8	13.3					
18														
19	Lewiston, Idaho	San Francisco, Cal.	CamP-NP-GN-WP	1413	k 96½	60,000	579.00	41.0	13.7	74	60,000	444.00	31.4	10.5
20			CamP-NP-SP	1245	m 74	60,000	444.00	35.7	11.9					
21														
22			CamP-UP-GN-WP	1242	k 96½	60,000	579.00	46.6	15.5	74	60,000	444.00	35.7	11.9
23			CamP-UP-SP	1074	m 74	60,000	444.00	41.3	13.8					
24														
25	Lewiston, Idaho	Los Angeles, Cal.	CamP-NP-GN-WP-ATSF	1836	n 128	60,000	768.00	41.8	13.9	105	60,000	630.00	34.3	11.4
26			CamP-NP-SP	1618	p 105	60,000	630.00	38.9	13.0					
27														
28			CamP-NP-SP-ATSF	1736	p 105	60,000	630.00	36.3	12.1					
29														
30			CamP-UP-GN-WP-ATSF	1665	n 128	60,000	768.00	46.1	15.4	105	60,000	630.00	37.8	12.6
31			CamP-UP-SP	1447	p 105	60,000	630.00	43.5	14.5					
32														
33			CamP-UP-SP-ATSF	1565	p 105	60,000	630.00	40.3	13.4					
34														

FLOUR

Explanation of Reference Marks

a - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Pendleton, Ore. To Portland, Ore.: 18½¢ - 60,000 lbs.) Item 2796-A, Tariff 10-0, ICC 978, North Pacific Coast Freight)Bureau, Agent.

Portland, Ore. To San Francisco, Cal.: 67½¢ - 60,000 lbs.) Item 6700-A, Tariff 241-E, ICC 1577, Pacific Southcoast) Freight Bureau, Agent.

b - Item 6725-A, Tariff 241-E, ICC 1577, Pacific Southcoast Freight Bureau, Agent.

c - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Pendleton, Ore. To Portland, Ore.: As in (a) above.

Portland, Ore. To Los Angeles, Cal.: 99¢ - 60,000 lbs.) Item 6716-A, Tariff 241-E, ICC 1577, Pacific Southcoast)Freight Bureau, Agent.

d - Item 6739-A, Tariff 241-E, ICC 1577, Pacific Southcoast Freight Bureau, Agent.

e - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Dayton, Wash. To Portland, Ore.: 20½¢ - 60,000 lbs.) Item 2230-A, Tariff 10-0, ICC 978, North Pacific Coast Freight) Bureau, Agent.

Portland, Ore. To San Francisco, Cal.: As in (a) above.

f - Item 6745-A, Tariff 241-E, ICC 1577, Pacific Southcoast Freight Bureau, Agent.

g - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Dayton, Wash. To Portland, Ore.: 20½¢ - 60,000 lbs.) Item 2896-A, Tariff 10-0, ICC 978, North Pacific Coast Freight) Bureau, Agent.

Portland, Ore. To San Francisco, Cal.: As in (a) above.

h - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Dayton, Wash. To Portland, Ore.: As in (e) above.

Portland, Ore. To Los Angeles, Cal.: As in (c) above.

- Item 6755-A, Tariff 241-E, ICC 1577, Pacific Southcoast Freight Bureau, Agent.

j - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Dayton, Wash. To Portland, Ore.: As in (g) above.

Portland, Ore. To Los Angeles, Cal.: As in (c) above.

k - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Lewiston, Ida. To Portland, Ore.: 29½ - 60,000 lbs.) Item 1532-A, Tariff 10-O, ICC 978, North Pacific Coast Freight Bureau, Agent.

Portland, Ore. To San Francisco, Cal.: As in (a) above.

m - Item 6800-A, Tariff 241-E, ICC 1577, Pacific Southcoast Freight Bureau, Agent.

n - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Lewiston, Ida. To Portland, Ore.: As in (k) above.

Portland, Ore. To Los Angeles, Cal.: As in (c) above.

p - Item 6815-A, Tariff 241-E, ICC 1577, Pacific Southcoast Freight Bureau, Agent.

Representative Commodities on which present combination rates applicable via Bieber and Portland thence Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COL/LNS/1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
L:					PRESENT						PROPOSED			
I: COMMOD-	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCFM (¢)	PTFM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCFM (¢)	PTFM (Mills)
H: ITY														
E:														
1: Lumber	Cocolla-	San Fran-	NP-GN-WP	1474	(91	70,000	637.00	43.2	12.3	83¢	70,000	584.50	39.7	11.3
2:	lla,	cisco, Cal.			a(94	60,000	564.00	38.3	12.8	86¢	60,000	519.00	35.2	11.7
3:	Idaho				(100	50,000	500.00	33.9	13.6	92¢	50,000	462.50	31.4	12.6
4:			NP-SP	1306	(85¢	70,000	584.50	44.8	12.8					
5:					b(86¢	60,000	519.00	39.7	13.2					
6:					(92¢	50,000	462.50	35.4	14.2					
7:	Cocolla-	Los Angeles,	NP-GN-WP-	1897	(110	70,000	770.00	40.6	11.6	98¢	70,000	689.50	36.3	10.4
8:	lla,	Cal.	ATASF		c(115	60,000	690.00	36.4	12.1	101¢	60,000	609.00	32.1	10.7
9:	Idaho				(127	50,000	635.00	33.5	13.4	107¢	50,000	537.50	28.3	11.3
10:			NP-SP	1679	(98¢	70,000	689.50	41.1	11.7					
11:					d(101¢	60,000	609.00	36.3	12.1					
12:					(107¢	50,000	537.50	32.0	12.8					
13:			NP-SP-	1797	(98¢	70,000	689.50	38.4	11.0					
14:			ATASF		d(101¢	60,000	609.00	33.9	11.3					
15:					(107¢	50,000	537.50	29.9	12.0					
16:	Yakima,	San Fran-	NP-GN-WP	1187	(72	70,000	504.00	42.5	12.1					
17:	Wash.	cisco, Cal.			e(75	60,000	450.00	37.9	12.6					
18:					(81	50,000	405.00	34.1	13.6					
19:			NP-SP	1019	(72	70,000	504.00	49.5	14.1					
20:					e(75	60,000	450.00	44.2	14.7					
21:					(81	50,000	405.00	39.7	15.9					
22:			UP-GN-WP	1201	(72	70,000	504.00	42.0	12.0					
23:					e(75	60,000	450.00	37.5	12.5					
24:					(81	50,000	405.00	33.7	13.5					
25:			UP-SP	1033	(72	70,000	504.00	48.8	13.9					
26:					e(75	60,000	450.00	43.6	14.5					
27:					(81	50,000	405.00	39.2	15.7					
28:	Yakima,	Los Angeles,	NP-GN-WP-	1609	(91	70,000	637.00	39.6	11.3	88¢	70,000	617.75	38.4	11.0
29:	Wash.	Cal.	ATASF		c(96	60,000	576.00	35.8	11.9	93¢	60,000	559.50	34.8	11.6
30:					(108	50,000	540.00	33.6	13.4	103	50,000	515.00	32.0	12.8
31:			NP-SP	1398	e(72	70,000	504.00	36.0	12.9					

Representative Commodities on which present combination rates applicable via Bieber and Portland thence Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.
(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMNS: 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
					PRESENT					PROPOSED				
L: I: COMMOD- N: ITY E:	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	FCPM (¢)	PTM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	FCPM (¢)	PTM (Mills)
1 Lumber	Yakima,	Los Angeles,	NP-SP-	1509	g(88¼	70,000	617.75	40.9	11.7					
2	Wash.	Cal.	AT&SF		(93¼	60,000	559.50	37.1	12.4					
3					h 103	50,000	515.00	34.1	13.7					
4			NP-SP&S-	1416	(87	70,000	609.00	43.0	12.3					
5			OT-GN-		i(92	60,000	552.00	39.0	13.0					
6			AT&SF		(104	50,000	520.00	36.7	14.7					
7			NP-SP&S-	1284	(87	70,000	609.00	47.4	13.6					
8			OT-GN-SP		i(92	60,000	552.00	43.0	14.3					
9					(104	50,000	520.00	40.5	16.2					
10			NP-SP&S-	1401	(87	70,000	609.00	43.5	12.4					
11			OT-GN-SP-		i(92	60,000	552.00	39.4	13.1					
12			AT&SF		(104	50,000	520.00	37.1	14.8					
13			UP-GN-WP-	1624	(91	70,000	637.00	39.2	11.2	88¼	70,000	617.75	38.0	10.9
14			AT&SF		f(96	60,000	576.00	35.5	11.8	93¼	60,000	559.50	34.5	11.5
15					(108	50,000	540.00	33.3	13.3	103	50,000	515.00	31.7	12.7
16			UP-SP	1486	g(88¼	70,000	617.75	43.9	12.6					
17					(93¼	60,000	559.50	39.8	13.3					
18					h 103	50,000	515.00	36.6	14.7					
19			UP-SP-	1524	g(88¼	70,000	617.75	40.5	11.6					
20			AT&SF		(93¼	60,000	559.50	36.7	12.2					
21					h 103	50,000	515.00	33.8	13.5					
22	Shel-	San Fran-	NP-GN-WP	1035	(83¼	70,000	444.50	42.9	12.3					
23	ton,	cisco, Cal.			j(67	60,000	402.00	38.8	12.9					
24	Wash.				(73	50,000	365.00	35.3	14.1					
25			NP-SP	870	(83¼	70,000	444.50	51.1	14.6					
26					j(67	60,000	402.00	46.2	15.4					
27					(73	50,000	365.00	42.0	16.8					
28	Shel-	Los Angeles,	NP-GN-WP-	1460	(83	70,000	581.00	39.8	11.4	77	70,000	539.00	36.9	10.5
29	ton,	Cal.	AT&SF		k(88	60,000	528.00	36.2	12.1	82	60,000	492.00	33.7	11.2
30	Wash.				(100	50,000	500.00	34.2	13.7	94	50,000	470.00	32.2	12.9
31			NP-SP	1243	(77	70,000	539.00	43.4	12.4					
33					p(82	60,000	492.00	39.6	13.2					
34					(94	50,000	470.00	37.8	15.1					

Representative Commodities on which present combination rates applicable via Bieber and Portland thence Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.
(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMNS/1:	2	3	4	5	6	7	8	9	10	11	12	13	14	15
L:					PRESENT					PROPOSED				
I:COMMOD-	FROM	TO	VIA	MILES	RATE	Min.Wt.	Per Car	FCPM	PTPM	RATE	Min.Wt.	Per Car	FCPM	PTPM
M:ITY						(Lbs.)	($)	(¢)	(Mills)		(Lbs.)	($)	(¢)	(Mills)
E:														
1: Lumber	Shel-	Los Angeles,	NP-SP-	1361	(77	70,000	539.00	39.6	11.3					
2:	ton,	Cal.	AT&SF		d(82	60,000	492.00	36.1	12.0					
3:	Wash.				(94	50,000	470.00	34.5	13.8					
4:	Olympia,	San Fran-	NP-GN-WP	1013	(63	70,000	444.50	43.9	12.5					
5:	Wash.	cisco, Cal.			m(67	60,000	402.00	39.7	13.2					
6:					(73	50,000	365.00	36.0	14.4					
7:			NP-SP	804	(63	70,000	444.50	52.7	15.0					
8:					m(67	60,000	402.00	47.6	15.9					
9:					(73	50,000	365.00	43.2	17.3					
10:	Olympia,	Los Angeles,	NP-GN-WP-	1435	(83	70,000	581.00	40.5	11.6	77	70,000	539.00	37.6	10.7
11:	Wash.	Cal.	AT&SF		n(88	60,000	528.00	36.8	12.3	82	60,000	492.00	34.3	11.4
12:					(100	50,000	500.00	34.8	13.9	94	50,000	470.00	32.8	13.1
13:			NP-SP	1217	(77	70,000	539.00	44.3	12.7					
14:					p(82	60,000	492.00	40.4	13.5					
15:					(94	50,000	470.00	38.6	15.4					
16:			NP-SP-	1335	(77	70,000	539.00	40.4	11.5					
17:			AT&SF		p(82	60,000	492.00	36.9	12.3					
18:					(94	50,000	470.00	35.2	14.1					

Explanation of Reference Marks

[Vol 538]

a - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Cocolalla, Idaho to Portland, Ore.: 45½¢ - 50,000 lbs.) Item 1290-G, Tariff 41-J, ICC 994, North Pacific Coast Freight Bureau, Agent.

Portland, Ore. to San Francisco, Cal.: 54½¢ - 50,000 lbs.) Item 3195-G, Tariff 80-I, ICC 1536, Pacific Southcoast Freight Bureau, Agent.
48½¢ - 60,000 lbs.)
45½¢ - 70,000 lbs.)

b - Item 41-D and Item 3196-I, Tariff 80-I, ICC 1536, Pacific Southcoast Freight Bureau, Agent.

c - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Cocolalla, Idaho to Portland, Ore.: As in (a) above.

Portland, Ore. to Los Angeles, Cal.: 82¢ - 50,000 lbs.) Item 3195, 17-H, Tariff 80-I, ICC 1536, Pacific Southcoast Freight Bureau, Agent.
70¢ - 60,000 lbs.)
65¢ - 70,000 lbs.)

d - Item 41-D and Item 3196.17-H, Tariff 80-I, ICC 1536, Pacific Southcoast Freight Bureau, Agent.

e - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Yakima, Wash. to Portland, Ore.: 26½¢ - 50,000 lbs.) Item 1290-G, Tariff 41-J, ICC 994, North Pacific Coast Freight Bureau, Agent.

Portland, Ore. to San Francisco, Cal.: As in (a) above.

f - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Yakima, Wash. to Portland, Ore.: As in (e) above.

Portland, Ore. to Los Angeles, Cal.: As in (c) above.

g - Item 31-L and Item 3192.16-I, Tariff 80-I, ICC 1536, Pacific Southcoast Freight Bureau, Agent.

h - Item 3196.17-H, Tariff 80-I, ICC 1536, Pacific Southcoast Freight Bureau, Agent.

i - Combination of Rates Over Bend, Ore., Constructed From Following Factors:

Yakima, Wash. to Bend, Ore.: 29½¢ - 50,000 lbs.) Item 1290-G, Tariff 41-J, ICC 994, North Pacific Coast Freight Bureau, Agent.

(Continued)

LUMBER (Continued)
Explanation of Reference Marks

i - Combination of Rates Over Bend, Ore., Constructed From Following Factors (Continued):

Bend, Ore. to Los Angeles, Cal.: 75¢ - 50,000 lbs.) Item 3192.16-I, Tariff 80-I, ICC 1536, Pacific Southcoast
63¢ - 60,000 lbs.) Freight Bureau, Agent.
58¢ - 70,000 lbs.)

j - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Shelton, Wash. to Portland, Ore.: 18½¢ - 38,000 lbs.) Item 3110, Tariff 41-J, ICC 994, North Pacific Coast Freight
) Bureau, Agent.

Portland, Ore. to San Francisco, Cal.: As in (a) above.

k - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Shelton, Wash. to Portland, Ore.: As in (j) above.

Portland, Ore. to Los Angeles, Cal.: As in (c) above.

m - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Olympia, Wash. to Portland, Ore.: 18½¢ - 38,000 lbs.) Item 3152, Tariff 41-J, ICC 994, North Pacific Coast Freight
) Bureau, Agent.

Portland, Ore. to San Francisco, Cal.: As in (a) above.

n - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Olympia, Wash. to Portland, Ore.: As in (m) above.

Portland, Ore. to Los Angeles, Cal.: As in (c) above.

p - Item 3195.17-H, Tariff 80-I, ICC 1536, Pacific Southcoast Freight Bureau, Agent.

[illegible]ementative commodities on which present combination rates applicable via Bieber and Portland thence [illegible]thern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in [illegible]fect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMNS/1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
					PRESENT					PROPOSED				
LINE COMMODITY	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills
1 Pulp-	Lewis-	San Fran-	CamP-NP-	1413	(b101	80/70,000	808.00	57.2	14.2					
2 board	ton,	cisco, Cal.	GN-WP		(b106	60,000	636.00	45.0	15.0					
3	Idaho				(b114½	50,000	572.50	40.5	16.2					
4					a(									
5					(c119	80/70,000	952.00	67.4	16.8	c 65½	80/70,000	524.00	37.1	9.3
6					(-	70,000	-	-	-	75	70,000	525.00	37.2	10.6
7					(124	60,000	744.00	52.7	17.6	79	60,000	474.00	33.5	11.2
8					(132	50,000	660.00	46.7	18.9	86	50,000	430.00	30.4	12.2
9			CamP-NP-	1245	(c 65½	80/70,000	524.00	42.1	10.5					
10			SP		d(75	70,000	525.00	42.[illegible]	[illegible].0					
11					(79	60,000	474.00	38.1	[illegible]2.7					
12					(86	50,000	430.00	34.5	13.8					
13			CamP-UP-	1242	(b10[illegible]	80/70,000	808.00	65.1	16.3					
14			GN-WP		(b106	60,000	636.00	51.2	17.1					
15					(b114½	50,000	572.50	46.1	18.4					
16					a(									
17					(c119	80/70,000	952.00	76.7	19.2	c 65½	80/70,000	524.00	42.2	10.5
18					(-	70,000	-	-	-	75	70,000	525.00	42.3	12.1
19					(124	60,000	744.00	59.9	20.0	79	60,000	474.00	38.2	12.7
20					(132	50,000	660.00	53.1	21.3	86	50,000	430.00	34.6	13.8
21			CamP-UP-	1074	(c 65½	80/70,000	524.00	48.8	12.2					
22			SP		d(75	70,000	525.00	48.9	14.0					
23					(79	60,000	474.00	44.1	14.7					
24					(86	50,000	430.00	40.0	16.0					
25		Los Angeles,	CamP-NP-	1836	(b120½	80/70,000	964.00	52.5	13.1					
26		Cal.	GN-WP-		(b126½	60,000	759.00	41.3	13.8					
27			AT&SF		(b133½	50,000	667.50	36.4	14.5					
28					e(									
29					(c138	80/70,000	1104.00	60.1	15.0	c 84	80/70,000	672.00	36.6	9.2
30					(-	70,000	-	-	-	94	70,000	658.00	35.8	10.2
31					(144	60,000	864.00	47.1	15.7	98	60,000	588.00	32.0	10.7
32					(151	50,000	755.00	41.1	16.4	106	50,000	530.00	28.9	11.5
33			CamP-NP-	1618	(c 84	80/70,000	672.00	41.5	10.4					
34			SP		d(94	70,000	658.00	40.7	11.6					
35					(98	60,000	588.00	36.3	12.1					
36					(106	50,000	530.00	32.8	13.1					

Representative Commodities on which present combination rates applicable via Bieber and Portland thence Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.
(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMNS/1:	2	3	4	5	6	7	8	9	10	11	12	13	14	15
L:					PRESENT					PROPOSED				
I:COMMOD-	FROM	TO	VIA	MILES	RATE	Min.Wt.	Per Car	PCPM	PTPM	RATE	Min.Wt.	Per Car	PCPM	PTPM
N:ITY						(Lbs.)	($)	(¢)	(Mills)		(Lbs.)	($)	(¢)	(Mills
1:Pulp-	Lewis-	Los Angeles,	CamP-NP-	1736	(c 84	80/70,000:	672.00:	38.7:	9.7					
2:board	ton,	Cal.	SP-AT&SP		d(94	70,000:	658.00:	37.9:	10.8					
3:	Idaho				(98	60,000:	588.00:	33.9:	11.3					
4:					(106	50,000:	530.00:	30.5:	12.2					
5:			CamP-UP-	1665	(b120	80/70,000:	964.00:	57.9:	14.5					
6:			GN-WP-		(b126	60,000:	759.00:	45.6:	15.2					
7:			AT&SF		(b133	50,000:	667.50:	40.1:	16.0					
8:					e(									
9:					(c138	80/70,000:	1104.00:	66.3:	16.6	c 84	80/70,000:	672.00:	40.4:	10.1
10:					(-	70,000:	-	-	-	94	70,000:	658.00:	39.5:	11.3
11:					(144	60,000:	864.00:	51.9:	17.3	98	60,000:	588.00:	35.3:	11.8
12:					(151	50,000:	755.00:	45.3:	18.1	106	50,000:	530.00:	31.8:	12.7
13:			CamP-UP-	1447	(c 84	80/70,000:	672.00:	46.4:	11.6					
14:			SP		d(94	70,000:	658.00:	45.5:	13.0					
15:					(98	60,000:	588.00:	40.6:	13.5					
16:					(106	50,000:	530.00:	36.6:	14.7					
17:			CamP-UP-	1565	(c 84	80/70,000:	672.00:	42.9:	10.7					
18:			SP-AT&SF		d(94	70,000:	658.00:	42.0:	12.0					
19:					(98	60,000:	588.00:	37.6:	12.5					
20:					(106	50,000:	530.00:	33.9:	13.5					
21:	Wallula,	San Fran-	NP-GN-WP	1290	(c 93	80/70,000:	744.00:	57.7:	14.4	c 65	80/70,000:	524.00:	40.6:	10.2
22:	Wash.	cisco, Cal.			f(-	70,000:	-	-	-	75	70,000:	525.00:	40.7:	11.6
23:					(108	60,000:	648.00:	50.2:	16.7	79	60,000:	474.00:	36.7:	12.2
24:					(116	50,000:	580.00:	45.0:	18.0	86	50,000:	430.00:	33.3:	13.3
25:			NP-SP	1122	(c 65	80/70,000:	524.00:	46.7:	11.7					
26:					d(75	70,000:	525.00:	46.8:	13.4					
27:					(79	60,000:	474.00:	42.2:	14.1					
28:					(86	50,000:	430.00:	38.3:	15.3					
29:			UP-GN-WP	1102	(c 93	80/70,000:	744.00:	67.5:	16.9	c 65	80/70,000:	524.00:	47.5:	11.9
30:					f(-	70,000:	-	-	-	75	70,000:	525.00:	47.6:	13.6
31:					(108	60,000:	648.00:	58.8:	19.6	79	60,000:	474.00:	43.0:	14.3
32:			UP-SP	930	(c 75	80/70,000:	600.00:	64.5:	19.4	64	80/70,000:	430.00:	39.0:	11.8

Southern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COMMODITY	2	3	4	5	6	7	8	9	10	11	12	13	14	15
					PRESENT					PROPOSED				
	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCM (¢)	PTM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCM (¢)	PTM (Mills)
1	Wallula,	Los Angeles,	NP-ON-WP-	1712	(c 112	80/70,000	896.00	52.3	13.1	c 84	80/70,000	672.00	39.3	9.8
2	Wash.	Cal.	AT&SF		g(-	70,000	-	-	-	94	70,000	658.00	38.4	11.0
3					(128	60,000	768.00	44.9	15.0	98	60,000	588.00	34.3	11.4
4					(135	50,000	675.00	39.4	15.8	106	50,000	530.00	31.0	12.4
5			NP-SP	1495	(c 84	80/70,000	672.00	44.9	11.2					
6					d(94	70,000	658.00	44.0	12.6					
7					(98	60,000	588.00	39.3	13.1					
8					(106	50,000	530.00	35.5	14.2					
9			NP-SP-	1612	(c 84	80/70,000	672.00	41.7	10.4					
10			AT&SF		d(94	70,000	658.00	40.8	11.7					
11					(98	60,000	588.00	36.5	12.2					
12					(106	50,000	530.00	32.9	13.2					
13			UP-ON-WP-	1525	(c 112	80/70,000	896.00	58.8	14.7	c 84	80/70,000	672.00	44.1	11.0
14			AT&SF		g(-	70,000	-	-	-	94	70,000	658.00	43.1	12.3
15					(128	60,000	768.00	50.4	16.8	98	60,000	588.00	38.6	12.9
16					(135	50,000	675.00	44.3	17.7	106	50,000	530.00	34.8	13.9
17			UP-SP	1307	(c 84	80/70,000	672.00	51.4	12.9					
18					d(94	70,000	658.00	50.3	14.4					
19					(98	60,000	588.00	45.0	15.0					
20					(106	50,000	530.00	40.6	16.2					
21			UP-SP-	1425	(c 84	80/70,000	672.00	47.2	11.8					
22			AT&SF		d(94	70,000	658.00	46.2	13.2					
23					(98	60,000	588.00	41.3	13.8					
24					(106	50,000	530.00	37.2	14.9					

PULPBOARD

Explanation of Reference Marks

a - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Lewiston, Ida. To Portland, Ore.: b 45½¢ - 50,000 lbs.) Item 1277-A, Tariff 80-M, ICC 1020, North Pacific Coast Freig
) Bureau, Agent. Rates published as not subject to Tariff of
) Increased Rates and Charges X-223.

63½¢ - 50,000 lbs.) Item 1275, Tariff 80-M, ICC 1020, North Pacific Coast Freight
) Bureau, Agent.

Portland, Ore. To San Francisco, Cal.: c 55½¢ - 80/70,000 lbs.) Item 8870-X, Tariff 1-S, ICC 1352, Pacific Southcoast
60½¢ - 60,000 lbs.) Freight Bureau, Agent.
69 ¢ - 50,000 lbs.)

b - Applies only on Pulpboard, other than Corrugated, when on Pallets or in Rolls weighing not less than 500 lbs.

c - Applies only on Pulpboard, other than Corrugated.

d - Item 8876-J, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

e - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Lewiston, Ida. To Portland, Ore.: As in (a) above.

Portland, Ore. To Los Angeles, Cal.: c 75¢ - 80/70,000 lbs.) Item 8870-X, Tariff 1-S, ICC 1352, Pacific Southcoast
81¢ - 60,000 lbs.) Freight Bureau, Agent.
88¢ - 50,000 lbs.)

f - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Wallula, Wash. To Portland, Ore.: 37½¢ - 80/70,000 lbs.) Item 1156, Tariff 80-M, ICC 1020, North Pacific Coast Freigh
47½¢ - 30,000 lbs.) Bureau, Agent.

Portland, Ore. To San Francisco, Cal.: As in (a) above.

g - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Wallula, Wash. To Portland, Ore.: As in (f) above.

Portland, Ore. To Los Angeles, Cal.: As in (e) above.

...ties on which present combination rates applicable via Pasco and Portland ...e Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through ...es in effect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COMMODITY	FROM	TO	VIA	MILES	PRESENT RATE	PRESENT Min.Wt. (Lbs.)	PRESENT Per Car ($)	PRESENT PCPM (¢)	PRESENT PTPM (Mills)	PROPOSED RATE	PROPOSED Min.Wt. (Lbs.)	PROPOSED Per Car ($)	PROPOSED PCPM (¢)	PROPOSED PTPM (Mills)
Roofing and Building Material	Stockton, Cal.	Toppenish, Wash.	WP-GN-NP	1113	a(99	100,000	990.00	88.9	17.8	96	100,000	960.00	86.3	17.3
					(116	40,000	464.00	41.7	20.8	104	40,000	416.00	37.4	18.7
			SP-NP	1013	b(96	100,000	960.00	94.8	19.0					
					(104	40,000	416.00	41.1	20.5					
	Pittsburg, Cal.	Toppenish, Wash.	SN-WP-GN-NP	1144	c(99	100,000	990.00	86.5	17.3	96	100,000	960.00	83.9	16.8
					(116	40,000	464.00	40.6	20.3	104	40,000	416.00	36.4	18.2
			SP-NP	1017	b(96	100,000	960.00	94.4	18.9					
					(104	40,000	416.00	40.9	20.5					
			AT&SF-SP-NP	1048	b(96	100,000	960.00	91.6	18.3					
					(104	40,000	416.00	39.7	19.8					
	Stockton, Cal.	Portland, Ore.	WP-GN	794	b(65	100,000	655.00	82.5	16.5					
					(78	40,000	312.00	39.3	19.6					
			SP	894	b(65	100,000	655.00	94.4	18.9					
					(78	40,000	312.00	45.0	22.5					
	Stockton, Cal.	Yakima, Wash.	WP-GN-UP	1108	d(99	100,000	990.00	89.4	17.9	96	100,000	960.00	86.6	17.3
					(116	40,000	464.00	41.9	20.9	104	40,000	416.00	37.5	18.8
			SP-UP	1008	b(96	100,000	960.00	95.2	19.0					
					(104	40,000	416.00	41.3	20.6					
	Pittsburg, Cal.	Yakima, Wash.	SN-WP-GN-UP	1139	e(99	100,000	990.00	86.9	17.4	96	100,000	960.00	84.3	16.9
					(116	40,000	464.00	40.7	20.4	104	40,000	416.00	36.5	18.3
			SP-UP	1012	b(96	100,000	960.00	94.9	19.0					
					(104	40,000	416.00	41.1	20.6					
			AT&SF-SP-UP	1043	b(96	100,000	960.00	92.0	18.4					
					(104	40,000	416.00	39.9	19.9					
	Stockton, Cal.	Spokane, Wash.	WP-GN	959	b(111	80,000	888.00	92.6	23.1					
					(124	40,000	496.00	51.7	25.9					

ROOFING AND BUILDING MATERIALS

Explanation of Reference Marks

a - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Stockton, Cal. To Portland, Ore.: 65½¢ - 100,000 lbs.) Item 9540-Q, Tariff 1-S, ICC 1352, Pacific Southcoast Freight
78 ¢ - 40,000 lbs.) Bureau, Agent.

Portland, Ore. To Toppenish, Wash.: 33½¢ - 60,000 lbs.) Item 7400-C, Tariff 2-P, ICC 1001, North Pacific Coast Freigh
38½¢ - 40,000 lbs.) Bureau, Agent.

b - Item 9540-Q, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

c - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Pittsburg, Cal. To Portland, Ore.: 65½¢ - 100,000 lbs.) Item 9540-Q, Tariff 1-S, ICC 1352, Pacific Southcoast Freigh
78¢ - 40,000 lbs.) Bureau, Agent.

Portland, Ore. To Toppenish, Wash.: As in (a) above.

d - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Stockton, Cal. To Portland, Ore.: As in (a) above.

Portland, Ore. To Yakima, Wash.: 33½¢ - 60,000 lbs.) Item 7400-C, Tariff 2-P, ICC 1001, North Pacific Coast Freight
38½¢ - 40,000 lbs.) Bureau, Agent.

e - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Pittsburg, Cal. To Portland, Ore.: As in (c) above.

Portland, Ore. To Yakima, Wash.: As in (d) above.

...ince Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through
...tes in effect via defendant's routes with the Southern Pacific Company via Portland.
(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
						PRESENT					PROPOSED				
	COMMODITY	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)
1	Sugar	Crockett,Cal.	Yakima,Wash.	BARN-WP-GN-NP	1230	(b 106	120,000	1272.00	103.4	17.2	b 87	120,000	1044.00	84.9	14.1
2						a(c 106	80,000	848.00	68.9	17.2	c 87	80,000	696.00	56.6	14.1
3						(c 130½	40,000	522.00	42.4	21.2	c104	40,000	416.00	33.8	16.9
4				SP-NP	989	(b 87	120,000	1044.00	105.6	17.6					
5						d(c 87	80,000	696.00	70.4	17.6					
6						(c 104	80,000	416.00	42.1	21.0					
7				BARN-WP-GN-UP	1220	(b 107	120,000	1284.00	105.2	17.5	b 87	120,000	1044.00	85.6	14.3
8						e(c 107	80,000	856.00	70.2	17.5	c 87	80,000	696.00	57.0	14.3
9						(c 132½	40,000	530.00	43.4	21.7	c104	40,000	416.00	34.1	17.0
10				SP-UP	1003	(b 87	120,000	1044.00	104.1	17.3					
11						d(c 87	80,000	696.00	69.4	17.3					
12						(c 104	40,000	416.00	41.5	20.7					
13		Clarksburg, Cal.	Yakima,Wash.	SN-WP-GN-NP	1085	(b 1 4	120,000	1248.00	115.0	19.2	b 87	120,000	1044.00	96.2	16.0
14						f(c 104	80,000	832.00	76.7	19.2	c 87	80,000	696.00	64.1	16.0
15						(c 124½	40,000	498.00	45.9	22.9	c104	40,000	416.00	38.3	19.2
16				SN-SP-NP	963	(b 87	120,000	1044.00	108.4	18.1					
17						d(c 87	80,000	696.00	72.3	18.1					
18						(c 104	40,000	416.00	43.2	21.6					
19				SN-WP-GN-UP	1075	(b 105	120,000	1260.00	117.2	19.5	b 87	120,000	1044.00	97.1	16.2
20						g(c 105	80,000	840.00	78.1	19.5	c 87	80,000	696.00	64.7	16.2
21						(c 130½	40,000	522.00	48.6	24.3	c104	40,000	416.00	38.7	19.3
22				SN-SP-UP	976	(b 87	120,000	1044.00	106.7	17.8					
23						d(c 87	80,000	696.00	71.2	17.8					
24						(c 104	40,000	416.00	42.5	21.3					
25		Manteca, Cal.	Yakima,Wash.	TS-WP-GN-NP	1128	(b 106	120,000	1272.00	112.8	18.8	b 87	120,000	1044.00	92.6	15.4
26						h(c 106	80,000	848.00	75.2	18.8	c 87	80,000	696.00	61.7	15.4
27						(c 130½	40,000	522.00	46.3	23.1	c104	40,000	416.00	36.9	18.4
28				SP-NP	1007	(b 87	120,000	1044.00	103.7	17.3					
29						d(c 87	80,000	696.00	69.1	17.3					
30						(c 104	40,000	416.00	41.3	20.7					
31				TS-WP-GN-UP	1118	(b 107	120,000	1284.00	114.8	19.1	b 87	120,000	1044.00	93.4	15.6
32						i(c 107	80,000	856.00	76.6	19.1	c 87	80,000	696.00	62.3	15.6
33						(c 132½	40,000	530.00	47.4	23.7	c104	40,000	416.00	37.2	18.6
34				SP-UP	1021	(b 87	120,000	1044.00	102.3	17.0					
35						d(c 87	80,000	696.00	68.2	17.0					
36						(c 104	40,000	416.00	40.7	20.4					

SUGAR

Explanation of Reference Marks

a - Combination of Rates Over Seattle, Wash. (lower than Combination over Portland, Ore.), Constructed From Following Factors:

Crockett, Cal. To Seattle, Wash.: b 69¢ - 120,000 lbs.) Item 10112, Tariff 1-S, ICC 1352, Pacific Southcoast Freight
c 69¢ - 80,000 lbs.) Bureau, Agent. Rates are published as not subject to Tariff
c 86¢ - 40,000 lbs.) of Increased Rates and Charges X-223.

Seattle, Wash. To Yakima, Wash.: b 37 ¢ - 120,000 lbs.) Item 7910-C, Tariff 2-P, ICC 1001, North Pacific Coast
c 37 ¢ - 80,000 lbs.) Freight Bureau, Agent. Rates are published as not subject
c 44½¢ - 40,000 lbs.) to Tariff of Increased Rates and Charges X-223.

b - Applies only on Shipments in Bulk, in Self-Clearing Permanently Enclosed Cars provided with opening for loading through th roof and outlets at bottom for unloading.

c - Applies only on Shipments in Packages.

d - Item 10112, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

e - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Crockett, Cal. To Portland, Ore.: b 63 ¢ - 120,000 lbs.) Item 10112, Tariff 1-S, ICC 1352, Pacific Southcoast Freigh
c 63 ¢ - 80,000 lbs.) Bureau, Agent. Rates are published as not subject to Tarif
c 80 ¢ - 40,000 lbs.) of Increased Rates and Charges X-223.

Portland, Ore. To Yakima, Wash.: b 44 ¢ - 120,000 lbs.) Item 7910-C, Tariff 2-P, ICC 1001, North Pacific Coast
c 44 ¢ - 80,000 lbs.) Freight Bureau, Agent. Rates are published as not subject
c 52½¢ - 40,000 lbs.) to Tariff of Increased Rates and Charges X-223.

f - Combination of Rates Over Seattle, Wash. (lower than Combination Over Portland, Ore.), Constructed From Following Factors:

Clarksburg, Cal. To Seattle, Wash.: b 67¢ - 120,000 lbs.) Item 10112, Tariff 1-S, ICC 1352, Pacific Southcoast Freig
c 67¢ - 80,000 lbs.) Bureau, Agent. Rates are published as not subject to
c 80¢ - 40,000 lbs.) Tariff of Increased Rates and Charges X-223.

Seattle, Wash. To Yakima, Wash.: As in (a) above.

g - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Clarksburg, Cal. To Portland, Ore.: b 61¢ - 120,000 lbs.) Item 10112, Tariff 1-S, ICC 1352, Pacific Southcoast
c 61¢ - 80,000 lbs.) Freight Bureau, Agent. Rates are published as not subject
c 78¢ - 40,000 lbs.) to Tariff of Increased Rates and Charges X-223.

Portland, Ore. To Yakima, Wash.: As in (e) above.

(Continued)

Explanation of Reference Marks

[fol. 549]

h - Combination of Rates Over Seattle, Wash. (lower than Combination Over Portland, Ore.), Constructed From Following Factors:

Manteca, Cal. To Seattle, Wash.: b 69¢ - 120,000 lbs.) Item 10112, Tariff 1-S, ICC 1352, Pacific Southcoast Freight
c 69¢ - 80,000 lbs.) Bureau, Agent. Rates are published as not subject to Tariff
c 86¢ - 40,000 lbs.) of Increased Rates and Charges X-223.

Seattle, Wash. To Yakima, Wash.: As in (a) above.

i - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Manteca, Cal. To Portland, Ore.: b 63¢ - 120,000 lbs.) Item 10112, Tariff 1-S, ICC 1352, Pacific Southcoast Freight
c 63¢ - 80,000 lbs.) Bureau, Agent. Rates are published as not subject to Tariff
c 80¢ - 40,000 lbs.) of Increased Rates and Charges X-223.

Portland, Ore. To Yakima, Wash.: As in (c) above.

Representative Commodities on which present combination rates applicable via Bieber and Portland thence Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMNS/1:	2	3	4	5	6	7	8	9	10	11	12	13	14	15
L:						PRESENT					PROPOSED			
I: COMMOD-	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.):	Per Car ($)	PCPW (¢)	PTPW (Mills)	RATE	Min.Wt. (Lbs.):	Per Car ($)	PCPW (¢)	PTPW (Mills)
N: ITY														
E:														
1: Wheat	Dayton,	San Fran-	NP-GN-WP	1373	a 87½	110,000	962.50	70.1	12.7	67½	110,000	742.50	54.1	9.8
2:	Wash.	cisco, Cal.	NP-SP	1205	b 67½	110,000	742.50	61.6	11.2					
3:			UP-GN-WP	1169	c 87½	110,000	962.50	82.3	15.0	67½	110,000	742.50	63.5	11.5
4:			UP-SP	1001	b 67½	110,000	742.50	74.2	13.5					
5:	Dayton,	Los Angeles,	NP-GN-WP-											
6:	Wash.	Cal.	AT&SF	1795	d 119	110,000	1309.00	72.9	13.3	99	110,000	1089.00	60.7	11.0
7:			NP-SP	1578	e 99	110,000	1089.00	69.0	12.5					
8:			NP-SP-											
9:			AT&SF	1696	e 99	110,000	1089.00	64.2	11.7					
10:			UP-GN-WP-											
11:			AT&SF	1592	f 119	110,000	1309.00	82.2	14.9	99	110,000	1089.00	68.4	12.4
12:			UP-SP	1374	e 99	110,000	1089.00	79.3	14.4					
13:			UP-SP-											
14:			AT&SF	1492	e 99	110,000	1089.00	73.0	13.3					
15:	Lewis-	San Fran-	CamP-NP-											
16:	ton,	cisco, Cal.	GN-WP	1413	g 96½	110,000	1061.50	75.1	13.7	74	110,000	814.00	57.6	10.5
17:	Idaho		CamP-NP-SP	1245	h 74	110,000	814.00	65.4	11.9					
18:			CamP-UP-											
19:			GN-WP	1242	g 96½	110,000	1061.50	85.5	15.5	74	110,000	814.00	65.5	11.9
20:			CamP-UP-SP	1074	h 74	110,000	814.00	75.8	13.8					
21:	Lewis-	Los Angeles,	CamP-NP-											
22:	ton,	Cal.	GN-WP-ATSF	1836	i 128	110,000	1408.00	76.7	13.9	105	110,000	1155.00	62.9	11.4
23:	Idaho		CamP-NP-SP	1618	i 105	110,000	1155.00	71.4	13.0					
24:			CamP-NP-											
25:			SP-ATSF	1736	i 105	110,000	1155.00	66.5	12.1					
26:			CamP-UP-											
27:			GN-WP-ATSF	1685	i 128	110,000	1408.00	83.6	15.4	105	110,000	1155.00	68.6	12.6
28:			CamP-UP-SP	1447	i 105	110,000	1155.00	79.8	14.3					
29:			CamP-UP-											
30:			SP-ATSF	1563	i 105	110,000	1155.00	73.8	13.4					

NOTES

Explanation of Reference Marks

a - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Dayton, Wash. To Portland, Ore.: 20½¢ - Minimum Weight: Marked Capacity of car used. Item 2230-A, Tariff 10-O, ICC 978, North Pacific Coast Freight Bureau, Agent.

Portland, Ore. To San Francisco, Cal.: 67½¢ - Minimum Weight: Marked Capacity of car used. Item 6700-A, Tariff 241-E, ICC 1577, Pacific Southcoast Freight Bureau, Agent.

b - Item 6745-A, Tariff 241-E, ICC 1577, Pacific Southcoast Freight Bureau, Agent.

c - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Dayton, Wash. To Portland, Ore.: 20½¢ - Minimum Weight: Marked Capacity of car used. Item 2896-A, Tariff 10-O, ICC 978, North Pacific Coast Freight Bureau, Agent.

Portland, Ore. To San Francisco, Cal.: As in (a) above.

d - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Dayton, Wash. To Portland, Ore.: As in (a) above.

Portland, Ore. To Los Angeles, Cal.: 99¢ - Minimum Weight: Marked Capacity of car used. Item 6716-A, Tariff 241-E, ICC 1577, Pacific Southcoast Freight Bureau, Agent.

e - Item 6755-A, Tariff 241-E, ICC 1577, Pacific Southcoast Freight Bureau, Agent.

f - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Dayton, Wash. To Portland, Ore.: As in (c) above.

Portland, Ore. To Los Angeles, Cal.: As in (d) above.

g - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Lewiston, Ida. To Portland, Ore.: 29½¢ - Minimum Weight: Marked Capacity of car used. Item 1532-A, Tariff 10-O, ICC 978, North Pacific Coast Freight Bureau, Agent.

Portland, Ore. To San Francisco, Cal.: As in (a) above.

h - Item 6800-A, Tariff 241-E, ICC 1577, Pacific Southcoast Freight Bureau, Agent.

(Continued)

WHEAT (Continued)

Explanation of Reference Marks

i - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Lewiston, Ida. To Portland, Ore.: As in (g) above.

Portland, Ore. To Los Angeles, Cal.: As in (d) above.

j - Item 6815-A, Tariff 241-E, ICC 1577, Pacific Southcoast Freight Bureau, Agent.

Representative Commodities on which present combination rates applicable via Bieber and Portland thence Southern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMNS/LINE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
							PRESENT				PROPOSED				
	COMMODITY	FROM	TO	VIA	MILES	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mills)	RATE	Min.Wt. (Lbs.)	Per Car ($)	PCPM (¢)	PTPM (Mill
1	Wood-	Lewiston	San Fran-	CamP-NP-	1413	a(106	80,000	848.00	60.0	15.0	77	80,000	616.00	43.6	10.9
2	pulp	Idaho	cisco, Cal.	GN-WP		(b97	80,000	776.00	54.9	13.7					
3				CamP-NP-SP	1245	c 77	80,000	616.00	49.5	12.4					
4				CamP-UP	1242	a(106	80,000	848.00	68.3	17.1	77	80,000	616.00	49.6	12.4
5				GN-WP		(b97	80,000	776.00	62.5	15.6					
6				CamP-UP-	1074	c 77	80,000	616.00	57.4	14.3					
7			Fullerton,	CamP-NP-	1823	-	100,000	-	-	-	84	100,000	840.00	46.1	9.2
8			Cal.	GN-WP-ATSF		e(124½	80,000	996.00	54.6	13.7	97	80,000	776.00	42.6	10.6
9						(b115	80,000	920.00	50.5	12.6	b85	80,000	680.00	37.3	9.3
10				CamP-NP-	1644	c(f 84	100,000	840.00	51.1	10.2					
11				SP-PE		(97	80,000	776.00	47.2	11.8					
12						g b 85	80,000	680.00	41.4	10.3					
13				CamP-NP-	1723	c(f 84	100,000	840.00	48.8	9.8					
14				SP-AT&SF		(97	80,000	776.00	45.0	11.3					
15						g b 85	80,000	680.00	39.5	9.9					
16				CamP-UP-	1652	-	100,000	-	-	-	84	100,000	840.00	50.8	10.2
17				GN-WP-ATSF		e(124½	80,000	996.00	60.3	15.1	97	80,000	776.00	47.0	11.7
18						(b115	80,000	920.00	55.7	13.9	b85	80,000	680.00	41.2	10.3
19				CamP-UP-	1473	c(f 84	100,000	840.00	57.0	11.4					
20						(97	80,000	776.00	52.7	13.2					
21						g b 85	80,000	680.00	46.2	11.5					
22				CamP-UP-	1552	c(f 84	100,000	840.00	54.1	10.8					
23				SP-ATSF		(97	80,000	776.00	50.0	12.5					
24						g b 85	80,000	680.00	43.8	11.0					

WOODPULP

Explanation of Reference Marks

a - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Lewiston, Ida. To Portland, Ore.:	40½¢ - 80,000 lbs.	Item 8340-B, Tariff 2-P, ICC 1001, North Pacific Coast Freight Bureau, Agent.
Portland, Ore. To San Francisco, Cal.:	(65½¢ - 80,000 lbs.	Item 10585-K, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent. Rates Published as not subject to Increases provided in Tariff of Increased Rates and Charges X-223.
	(b56½¢- 80,000 lbs.	Item 10600-J, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

b - Rate only applies when Moisture Content is in Excess of 40% at time of Shipment.

c - Item 10585-K, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent. Rates Published as not subject to Increases provided in Tariff of Increased Rates and Charges X-223.

e - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Lewiston, Ida. To Portland, Ore.:	As in (a) above.	
Portland, Ore. To Fullerton, Cal.:	(84¢ - 80,000 lbs.	Item 10585-K, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent. Rates Published as not subject to Increases provided in Tariff of Increased Rates and Charges X-223.
	(b75¢ - 80,000 lbs.	Item 10605-E, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

f - Approved PSFB-NPCFB Joint Docket 9067, not yet published. See Pacific Southcoast Freight Bureau Rate Advice B-1163, dated April 7, 1961.

g - Item 10606-H, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

Representative commodities on which present combination rates applicable via Lewiston and Portland, Spokane Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland.

(Rates are in Cents per 100 pounds and include Ex Parte 223 increase)

COLUMN NO.	2	3	4	5	6	7	8	9	10	11	12	13	14	15
						PRESENT				PROPOSED				
ITEM NO.	COMMODITY	FROM	TO	VIA	MILES	RATE	Min. Wt. (Lbs.)	Per Car ($)	PCFM (¢)	PTFM (Mills)	RATE	Min. Wt. (Lbs.)	Per Car ($)	PCFM (¢)	PTFM (Mill
1	Wrapping Paper	Lewiston, Idaho	San Francisco, Cal.	CamP-NP-GN-WP	1413	a(151	(b90,000	1359.00	96.2	21.4	94	(b90,000	846.00	59.9	13.3
2						(	(c70,000	1057.00	74.8	21.4		(c70,000	658.00	46.6	13.3
3						(158	40,000	632.00	44.7	22.4	102	40,000	408.00	28.9	14.4
4				CamP-NP-SP	1245	(94	(b90,000	846.00	68.0	15.1					
5						d(	(c70,000	658.00	52.9	15.1					
6						(102	40,000	408.00	32.8	16.4					
7				CamP-UP-GN-WP	1242	a(151	(b90,000	1359.00	109.4	24.3	94	(b90,000	846.00	68.1	15.1
8						(	(c70,000	1057.00	85.1	24.3		(c70,000	658.00	53.0	15.1
9						(158	40,000	632.00	50.9	25.4	102	40,000	408.00	32.9	16.4
10				CamP-UP-SP	1074	d(94	(b90,000	846.00	78.8	17.5					
11						(	(c70,000	658.00	61.3	17.5					
12						(102	40,000	408.00	38.0	19.0					
13		Lewiston, Idaho	Los Angeles, Cal.	CamP-NP-GN-WP-ATSF	1836	e(172	(b90,000	1548.00	84.3	18.7	112	(b90,000	1008.00	54.9	12.2
14						(	(c70,000	1204.00	65.6	18.7		(c70,000	784.00	42.7	12.2
15						(179	40,000	716.00	39.0	19.5	120	40,000	480.00	26.1	13.1
16				CamP-NP-SP	1618	d(112	(b90,000	1008.00	62.3	13.8					
17						(	(c70,000	784.00	48.5	13.8					
18						(120	40,000	480.00	29.7	14.8					
19				CamP-NP-SP-ATSF	1736	d(112	(b90,000	1008.00	58.1	12.9					
20						(	(c70,000	784.00	45.2	12.9					
21						(120	40,000	480.00	27.7	13.8					
22				CamP-UP-GN-WP-ATSF	1665	e(172	(b90,000	1548.00	93.0	20.7	112	(b 90,000	1008.00	60.5	13.5
23						(	(c70,000	1204.00	72.3	20.7		(c 70,000	784.00	47.1	13.5
24						(179	40,000	716.00	43.0	21.5	120	40,000	480.00	28.8	14.4
25				CamP-UP-SP	1447	d(112	(b90,000	1008.00	69.7	15.5					
26						(	(c70,000	784.00	54.2	15.5					
27						(120	40,000	480.00	33.2	16.6					
28				CamP-UP-SP-ATSF	1565	d(112	(b90,000	1008.00	64.4	14.3					
29						(	(c70,000	784.00	50.1	14.3					
30						(120	40,000	480.00	30.7	15.3					
31		Millwood, Wash.	San Francisco, Cal.	GN-WP	1059	f(85	(b90,000	765.00	72.2	16.1					
32						(	(c70,000	595.00	56.2	16.1					
33						(92	40,000	368.00	34.8	17.4					
34		Millwood, Wash.	Los Angeles, Cal.	GN-WP	1482	f(102	(b90,000	918.00	61.9	13.8					
35						(	(c70,000	714.00	48.2	13.8					
36						(109	40,000	436.00	29.4	14.7					

WRAPPING PAPER

Explanation of Reference Marks

a - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Lewiston, Ida. To Portland, Ore.: 79¢ - 40,000 lbs.) Item 1200, Tariff 80-M, ICC 1020, North Pacific Coast Freight Bureau, Agent.

Portland, Ore. To San Francisco, Cal.: 73¢ - (b 90,000 lbs.)
(c 70,000 lbs.) Item 8858½-I, Tariff 1-S, ICC 1352, Pacific Southcoast
80¢ - 40,000 lbs.) Freight Bureau, Agent.
101¢ - 30,000 lbs.)

b - Applies when shipped in cars over 41 feet, 7 inches in length to and including 50 feet, 6 inches in length (inside measurement).

c - Applies when shipped in cars not over 41 feet, 7 inches in length (inside measurement).

d - Item 8859-G, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

e - Combination of Rates Over Portland, Ore., Constructed From Following Factors:

Lewiston, Ida. To Portland, Ore.: As in (a) above.

Portland, Ore. To Los Angeles, Cal.: 94¢ - (b 90,000 lbs.)
(c 70,000 lbs.)
101¢ - 40,000 lbs.) Item 8858½-I, Tariff 1-S, ICC 1352, Pacific Southcoast
111¢ - 36,000 lbs.) Freight Bureau, Agent.
128¢ - 30,000 lbs.)

f - Item 8859.2-L, Tariff 1-S, ICC 1352, Pacific Southcoast Freight Bureau, Agent.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1964~~ 1965

No. ~~598~~ 12

THE WESTERN PACIFIC RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

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Originations and terminations of Carload freight traffic via Bieber moving west of transcontinental.

COLUMNS / LINES	1 Year	2 From or to Points on	3 Originations Cars	4 Originations Percents of Annual Total	5 Terminations Cars	6 Terminations Percents of Annual Total	7 Total Cars	8 Total Percents of Annual Total
1	1955	WP	10,505	30.8	7,674	27.9	18,179	29.8
2		SN-TS	862	2.5	714	2.6	1,576	2.6
3		Complainants'						
4		Total	11,367	33.4	8,388	30.5	19,755	32.1
5		ATSF	16,501	48.4	17,576	64.0	34,077	55.4
6		Other connections*	6,192	18.2	1,497	5.5	7,689	12.5
7		Total	34,060	100.0	27,461	100.0	61,521	100.0
8	1956	WP	10,658	33.1	6,284	24.4	16,942	29.2
9		SN-TS	811	2.5	636	2.5	1,447	2.5
10		Complainants'						
11		Total	11,469	35.6	6,920	26.8	18,389	31.7
12		ATSF	14,623	45.4	17,380	67.4	32,003	55.2
13		Other connections*	6,099	18.9	1,477	5.7	7,576	13.1
14		Total	32,191	99.9	25,777	99.9	57,968	100.0
15	1957	WP	11,088	38.0	5,867	24.7	16,955	32.0
16		SN-TS	774	2.7	705	3.0	1,479	2.8
17		Complainants'						
18		Total	11,862	40.7	6,572	27.6	18,434	34.8
19		ATSF	12,979	44.5	15,725	66.1	28,704	54.2
20		Other connections*	4,330	14.8	1,484	6.2	5,814	11.0
21		Total	29,171	100.0	23,781	99.9	52,952	100.0
22	1958	WP	7,824	32.9	7,681	28.7	15,505	30.6
23		SN-TS	491	2.1	644	2.4	1,135	2.2
24		Complainants'						
25		Total	8,315	34.9	8,325	31.1	16,640	32.9
26		ATSF	11,625	48.8	17,030	63.6	28,655	56.6
27		Other connections*	3,865	16.2	1,438	5.4	5,303	10.5
28		Total	23,805	99.9	26,793	100.1	50,598	100.0
29	1959	WP	8,049	33.8	7,753	26.0	15,802	29.4
30		SN-TS	590	2.5	899	3.0	1,489	2.8
31		Complainants'						
32		Total	8,639	36.2	8,652	29.0	17,291	32.2
33		ATSF	11,286	47.4	20,185	67.4	31,471	58.5
34		Other connections*	3,907	16.4	1,091	3.6	4,998	9.3
35		Total	23,832	100.0	29,928	99.9	53,760	100.0

*Of Western Pacific Railroad Company.
Source: Statistical records of The Western Pacific Railroad Company.

CARS VIA SANTA FE VIA BIEBER OR PORTLAND
(WEST OF Transcontinental Territory)

COLUMNS/1:	2	3	4	5	6	7	8	9	10	11	12	13
L:	NORTHBOUND				SOUTHBOUND				TOTAL			
I: YEAR	Via Bieber	Via ø Portland SP	* Total	Per Cent: Via Bieber	Via Bieber	Via ø Portland SP	* Total	Per Cent: Via Bieber	Via Bieber	Via ø Portland SP	* Total	Per Cent Via Bieber
1: 1955	16,501	2,961	19,462	84.8	17,576	4,123	21,699	81.0	34,077	7,084	41,161	82.8
2: 1956	14,623	3,926	18,549	78.8	17,380	5,124	22,504	77.2	32,003	9,050	41,053	78.0
3: 1957	12,979	2,820	15,799	82.2	15,725	3,656	19,381	81.1	28,704	6,476	35,180	81.6
4: 1958	11,625	2,568	14,193	81.9	17,030	2,911	19,941	85.4	28,655	5,479	34,134	83.9
5: 1959	11,286	2,783	14,069	80.2	20,185	5,260	25,445	79.3	31,471	8,043	39,514	79.7
6: Per												
7:Cents	68.40	93.31	72.29	----	114.84	[illegible]7.58	117.26	----	92.35	113.54	96.00	----
8:1959 of:												
9:1955												
10: Total	67,014	15,058	82,072	81.7	87,896	21,074	108,970	80.7	154,910	36,132	191,062	81.1
11:Average	13,403	3,012	16,414	81.7	17,579	4,215	21,794	80.7	30,982	7,226	38,208	81.1

Sources: Western Pacific Railroad Company's Accounting Department Records.
Santa Fe Railway's Traffic Department's Records.

Explanation of Reference Marks:

*Between California and Oregon-Washington.
øDifference between "Total" and "Via Bieber".

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 12

Traffic via Bieber compared with total revenue freight traffic handled by The Western Pacific Railroad Company.

COLUMNS/1	2	3	4	5	6	7	8	9	10	11
LINE					PERCENTS					
					Of Totals Via Bieber			Of Total Revenue Freight Handled		
Year		Cars	Tons	Western Pacific's Revenues	Cars	Tons	Western Pacific's Revenues	Cars	Tons	Western Pacific's Revenues
1 1955	*West of T.C.	61.521	1.831.704	8.290.583	86.3	88.6	82.3	24.1	24.7	16.4
2	*Transcontinental	9.734	236.789	1.783.726	13.7	11.4	17.7	3.8	3.2	3.5
3	Total via Bieber	71.255	2.068.493	10.074.309	100.0	100.0	100.0	27.9	27.9	19.9
4	Total revenue									
5	freight handled	255.507	7.420.080	50.688.311	—	—	—	100.0	100.0	100.0
6 1956	*West of T.C.	57.968	1.758.066	7.896.777	84.7	87.4	80.5	22.8	23.0	15.5
7	*Transcontinental	10.438	253.836	1.914.894	15.3	12.6	19.5	4.1	3.3	3.8
8	Total via Bieber	68.406	2.011.902	9.811.671	100.0	100.0	100.0	26.9	26.3	19.3
9	Total revenue									
10	freight handled	254.682	7.647.854	50.917.498	—	—	—	100.0	100.0	100.0
11 1957	*West of T.C.	52.952	1.578.434	7.575.697	82.8	85.1	78.2	22.0	21.4	14.6
12	*Transcontinental	10.973	275.922	2.111.909	17.2	14.9	21.8	4.6	3.7	4.1
13	Total via Bieber	63.925	1.854.356	9.687.606	100.0	100.0	100.0	26.6	25.1	18.7
14	Total revenue									
15	freight handled	240.382	7.388.997	51.829.419	—	—	—	100.0	100.0	100.0
16 1958	*West of T.C.	50.598	1.512.679	7.606.500	80.3	83.1	75.3	23.0	21.9	15.0
17	*Transcontinental	12.431	308.442	2.492.985	19.7	16.9	24.7	5.7	4.5	4.9
18	Total via Bieber	63.029	1.821.121	10.099.485	100.0	100.0	100.0	28.7	26.4	19.9
19	Total revenue									
20	freight handled	219.850	6.910.926	50.679.746	—	—	—	100.0	100.0	100.0
21 1959	*West of T.C.	53.760	1.663.787	7.569.880	80.3	83.7	75.1	23.5	23.5	15.0
22	*Transcontinental	13.227	323.276	2.512.438	19.7	16.3	24.9	5.7	4.6	4.9
23	Total via Bieber	66.987	1.987.063	10.082.318	100.0	100.0	100.0	29.2	28.1	19.9
24	Total revenue									
25	freight handled	229.133	7.069.333	50.539.698	—	—	—	100.0	100.0	100.0
26 Total	*West of T.C.	276.799	8.344.670	38.939.437	83.0	85.6	78.3	23.1	22.9	15.3
27 (1955-	*Transcontinental	56.803	1.398.265	10.815.952	17.0	14.4	21.7	4.7	3.8	4.2
28 1959)	Total via Bieber	333.602	9.742.935	49.755.389	100.0	100.0	100.0	27.8	26.7	19.5
29	Total revenue									
30	freight handled	1.199.554	36.437.190	254.654.672	—	—	—	100.0	100.0	100.0
31 Average	*West of T.C.	55.360	1.668.934	7.787.887	83.0	85.6	78.3	23.1	22.9	15.3
32 (1955-	*Transcontinental	11.361	279.653	2.163.190	17.0	14.4	21.7	4.7	3.8	4.2
33 1959)	Total via Bieber	66.720	1.948.587	9.951.078	100.0	100.0	100.0	27.8	26.7	19.5
34	Total revenue									
35	freight handled	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	100.0	100.0	100.0

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 13

that Railroad. Witness

COLUMNS / 1	2	3	4	5	6	7	8	9	10	11
LINE Traffic Movements	Year	Cars	Tons	Western Pacific's Revenues	PERCENTS OF Total West of Transcontinental			Total revenue freight handled by W.P.R.R.Co.		
					Cars	Tons	W.P's. Revenues	Cars	Tons	W.P's. Revenues
1 West of	1955	61,521	1,831,704	$ 8,290,583	46.8	39.9	41.7	24.1	24.7	16.4
2 Transcontinental										
3 Traffic Via	1956	57,968	1,758,066	7,896,777	45.5	37.4	40.7	22.8	23.0	15.5
4 Bieber										
5	1957	52,952	1,578,434	7,575,697	44.1	35.0	38.7	22.0	21.4	14.6
6										
7	1958	50,598	1,512,679	7,606,500	46.2	36.7	38.9	23.0	21.9	15.0
8										
9	1959	53,760	1,663,787	7,569,880	47.5	40.0	41.4	23.5	23.5	15.0
10										
11	Total 1955-1959	276,799	8,344,670	38,939,437	46.0	37.8	40.3	23.1	22.9	15.3
12										
13	Average 1955-1959	55,360	1,668,934	7,787,887	46.0	37.8	40.3	23.1	22.9	15.3
14										
15 Other West of	1955	69,835	2,761,846	11,583,340	53.2	60.1	58.3	27.3	37.2	22.8
16 Transcontinental	1956	67,347	2,944,124	11,497,960	54.5	62.6	59.3	27.2	38.5	22.6
17 Traffic	1957	67,049	2,932,794	11,986,746	55.9	65.0	61.3	27.9	39.7	23.1
18	1958	58,920	2,604,772	11,924,212	53.8	63.3	61.1	26.8	37.7	23.5
19	1959	59,346	2,493,041	10,693,665	52.5	62.2	58.6	25.9	35.3	21.1
20	Total 1955-1959	324,497	13,736,577	57,685,923	54.0	62.1	59.7	27.0	37.7	22.6
21	Average 1955-1959	64,899	2,747,315	11,537,185	54.0	62.2	59.7	27.0	37.7	22.6
22 Total West of	1955	131,356	4,593,550	19,873,923	100.0	100.0	100.0	51.4	61.9	39.2
23 Transcontinental	1956	127,315	4,702,190	19,394,737	100.0	100.0	100.0	50.0	61.5	38.1
24 Traffic	1957	120,001	4,511,228	19,562,443	100.0	100.0	100.0	49.9	61.1	37.7
25	1958	109,518	4,117,451	19,530,712	100.0	100.0	100.0	49.8	59.6	38.5
26	1959	113,106	4,156,828	18,263,545	100.0	100.0	100.0	49.4	58.8	36.1
27	Total 1955-1959	601,296	22,081,247	96,625,360	100.0	100.0	100.0	50.1	60.6	37.9
28	Average 1955-1959	120,259	4,416,249	19,325,072	100.0	100.0	100.0	50.1	60.6	37.9
29 Total Revenue	1955	255,507	7,420,080	50,688,311	---	---	---	100.0	100.0	100.0
30 freight handled	1956	254,682	7,647,854	50,917,498	---	---	---	100.0	100.0	100.0
31 by The Western	1957	240,382	7,388,997	51,829,419	---	---	---	100.0	100.0	100.0
32 Pacific Railroad	1958	219,850	6,910,926	50,679,746	---	---	---	100.0	100.0	100.0
33 Company	1959	229,133	7,069,333	50,539,698	---	---	---	100.0	100.0	100.0
34	Total 1955-1959	1,199,554	36,437,190	254,654,672	---	---	---	100.0	100.0	100.0
35	Average 1955-1959	239,910	7,287,438	50,930,934	---	---	---	100.0	100.0	100.0

W.P's. .... Western Pacific's.
W.P.R.R.Co. ... Western Pacific Railroad Company.
Source: Statistical records of The Western Pacific Railroad Company.

[fol. 559]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 14

Copies of pages of Pacific Southcoast Freight Bureau Tariff 1-S, ICC 1352, containing present rates on Cast Iron Pipe from Decoto, California on the Western Pacific Railroad to points in Oregon, Washington and Northern Idaho, via Western Pacific to Bieber, Cal., Great Northern Railway to Portland, Oregon, thence via Northern Pacific Railway Company or Union Pacific Railroad Company.

NOT subject to Increases referred to in Items X-175, X-196 or X-206.
Subject, except as noted, to Increases referred to in Item X-212 and Supplement 130 (X-223 series).

17th Revised Page.....333 | PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent | ICC.....1282
Cancels 18th Revised Page.....333 | TARIFF 1-S | CTC.... 142

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 7155-E

APPLIES ONLY IN CONNECTION WITH RATES MAKING SPECIFIC REFERENCE TO THIS ITEM

Column J rates apply on:

Iron or Steel Articles, viz.:
Pipe, cast
Fittings, pipe, cast

Column K rates apply on:

Iron or Steel, as described in WC under heading "Iron or Steel."
Iron or Steel Pipe or Tubing or Iron or Steel Pipe or Tubing Fittings.

Item 7158-U

Iron or Steel Articles, as described in Items 7140 to 7155.
For list of articles taking Column A, B, C, D, E, F, G, H or J rates, see Items 7140, 7145, 7150 and 7155.

TO (Except as Noted)	Col.	FROM, Except as Noted: Group 15 (San Francisco) Group 16 (Port Chicago)				Group 17A (Los Angeles)			Group 17D (Santa Barbara)	
		MINIMUM WEIGHT (LBS.)								
(Pro. 5021)		⑩	⑩	⑩	⑩	⑩	⑩	⑩	⑩	⑩
Group 25 (Klamath Falls).....	A.....	.....	Ⓤ③71	.....	Ⓤ③60 s⑦72	⚠⚠Ⓤ⑭ ⑮100	.....	Ⓤ②78 s⑨84	130	.....
	B.....	⑧⑫99	⑧⑧⑫99	.....	.....	.....	.....	.....	.....	.....
	C.....	.....	Ⓤ③71	.....	Ⓤ③60 s⑦72	⚠⚠Ⓤ⑭ ⑮100	.....	Ⓤ②78 s⑨84	130	.....
	D.....	.....	Ⓤ③71	85	Ⓤ③60	⚠⚠Ⓤ⑭ ⑮100	.....	Ⓤ②78	.....	.....
	E, H....	.....	Ⓤ③71	.....	Ⓤ③60 s⑦72	⚠⚠Ⓤ⑭ ⑮100	.....	Ⓤ②78 s⑨84	130	.....
	F.....	.....	Ⓤ③71	.....	Ⓤ③60 s⑦72	⚠⚠Ⓤ⑭ ⑮100	.....	Ⓤ②78 s⑨84	.....	.....
	G.....	.....	Ⓤ③71	.....	Ⓤ③60 s⑦72	⚠⚠Ⓤ⑭ ⑮100	.....	Ⓤ②78 s⑨84	.....	.....
	J.....	.....	Ⓤ③71	⑪⑮64	Ⓤ③60	⚠⚠Ⓤ⑭ ⑮100 152	⑭⑮84	Ⓤ②78	.....	92

②Does not apply from points on ATSF in connection with SP.
③Does not apply from Group 15 points on ATSF in connection with SP.
⑤Does not apply on shipments consisting exclusively of articles for which rates are provided in Column A.
⑦Does not apply to Group 15 points on ATSF in connection with SP.
⑨Does not apply to points on ATSF in connection with SP.
⑩Does not apply from or to Group 15 points on ATSF in connection with SP.
⑪Applies only on shipments which include Plates or Sheets (exclusive of planished or russia), as described in Column B, Item 7140, in mixed carloads.
⑫Does not apply on shipments which include Plates or Sheets (exclusive of planished or russia), as described in Column B, Item 7140.
⑬Does not apply from or to points on ATSF in connection with SP.
⑭Rates also apply from sideline points to headline points.
⑮Min. wt. 30,000 lbs.
⑯Min. wt. 40,000 lbs.
⑰Min. wt. 60,000 lbs.
⑱Min. wt. 80,000 lbs.
s—Applies southbound only.
Ⓤ Not subject to Increases referred to in Item X-212.
⚠⚠Reduction southbound.
For Explanation of other Reference Marks, see Item 10.

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NOT subject to Increases referred to in Items X-175, X-196 or X-206.
Subject, except as noted, to Increases referred to in Item X-212 and Supplement 130 (X-223 series).

30th Revised Page.....333A
Cancels 29th Revised Page.....333A

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1382
CTC.... 142

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS., except as shown below
See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Iron or Steel Articles, as described in Items 7140 to 7155. Item 7158½-L
For list of articles taking Columns A, B, C, D, E, F, G, H, J or K rates, see Items 7140, 7145, 7150 and 7155.

TO Except as Noted	Col.	FROM, Except as Noted: Group 15 (San Francisco) Group 16 (Port Chicago)				Group 17A (Los Angeles)				Group 17D (Santa Barbara)				Group 18 (San Diego)			rs(Ⓢ)2985 San Diego, Cal.		Group 19 (Los Angeles) 641 Kaiser, Cal. 2010 gTorrance, Cal. 5971 dKaiser Cal.	
		MINIMUM WEIGHT (LBS.)																		
		(Ⓢ)	(Ⓢ)	(Ⓢ)	k(Ⓢ)	k(Ⓢ)	(Ⓢ)	(Ⓢ)	k(Ⓢ)	k(Ⓢ)	(Ⓢ)	(Ⓢ)	k(Ⓢ)	(Ⓢ)(Ⓢ)	k(Ⓢ)	(Ⓢ)(Ⓢ)	(Ⓢ)(Ⓢ)	(Ⓢ)(Ⓢ)	(Ⓢ)	e(Ⓢ)
Group 26 (Portland) Group 27 (Portland) 18529 Rockwood ....Ore.	A....	.....	♠bk 100	.....	♠b78	...	♠b k120	w(Ⓢ) (T)1620	♠b92	...	151	...	121	133	...	101	c133	c101	(Ⓢ)ckpu 120	(Ⓢ)cpku92 ck105 wcu(Ⓢ) (Ⓢ)(T)1620
	B....	.....	b112	.....	.....	...	.....	.....	.....	...	...	...	.....	.....	...	.....	.....	.....	.....	.....
	C....	.....	k100	(Ⓢ)no78	78	...	k120	(Ⓢ)no92	92	...	...	...	.....	.....	...	.....	.....	.....	(Ⓢ)ckpu 120 c134	(Ⓢ)cpku92 ck105 (Ⓢ)(Ⓢ) cpun(Ⓢ)92
	D....	.....	....	92	....	...	.....	.....	.....	...	...	...	.....	.....	...	.....	.....	.....	.....	.....
	E....	.....	♠ba k100	.....	♠bh 78	...	♠b ak120	.....	♠b92	...	...	...	.....	.....	...	.....	.....	.....	(Ⓢ)ckpu 120	(Ⓢ)cpku92 c105
	F,G, H...	.....	k100	.....	78	...	k120	.....	92	...	...	...	.....	.....	...	.....	.....	.....	(Ⓢ)ckpu 120	(Ⓢ)cpku92
	J....	.....	....	km72	....	...	152	k92	....	...	...	k92	.....	.....	...	.....	.....	.....	(Ⓢ)cpu152	(Ⓢ)cpku(Ⓢ) 92
	K...	k153	....	.....	....	185	.....	.....	....	185	...	...	.....	.....	...	.....	.....	.....	(Ⓢ)cku(Ⓢ) 185	.....
Group 28 (Seattle)	A....	.....	k110	.....	87	...	k130	w(Ⓢ) (T)1800	101	...	...	...	.....	143	...	110	143	110	(Ⓢ)kpu130	(Ⓢ)pku101 k115 wu(Ⓢ)(Ⓢ) (T)1800
	C....	.....	k110	(Ⓢ)n87	87	...	k130	(Ⓢ)n101	101	...	...	...	.....	.....	...	.....	.....	.....	(Ⓢ)kpu130 144	(Ⓢ)pku101 k115 (Ⓢ)(Ⓢ)npu (Ⓢ)101
	E....	.....	ak 110	.....	87	...	k130	.....	101	...	...	...	.....	.....	...	.....	.....	.....	(Ⓢ)kpu130	(Ⓢ)pku101 115
	F,G, H...	.....	k110	.....	87	...	k130	.....	101	...	...	...	.....	.....	...	.....	.....	.....	(Ⓢ)kpu130	(Ⓢ)pku101
	J....	.....	....	km72	....	...	152	k92	....	...	...	k 102	.....	.....	101	.....	.....	.....	(Ⓢ)pu153	(Ⓢ)pku(Ⓢ) 92
	K...	k170	....	.....	....	185	.....	.....	....	185	...	...	.....	.....	...	.....	.....	.....	(Ⓢ)ku(Ⓢ) 185	.....

(JT-7557)

(Ⓢ)Expires as per Item 20.
For Explanation of Notes and other Reference Marks, see Items 10 and 7158.7.

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SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 7188.7-D

EXPLANATION OF REFERENCE MARKS

(Applies only in connection with rates making specific reference hereto)

a—Does not apply on Column E articles for which rates are named in Item 7205.
b—Does not apply from or to Eugene, Ore. (Indices 14940 or 16115); for rates, see Items 7165 and 7170.
c—Applies only in connection with rates from or to Group 26 points.
d—Via SP, Colton, Cal., UP, via Salt Lake City, Utah, and Huntington, Ore.
e—Except as noted.
g—Via PE, Los Angeles, Cal., thence via routes provided in Section 6 in connection with UP, via Salt Lake City, Utah, and Huntington, Ore., or vice versa.
h—Does not apply on shipments consisting exclusively of articles for which rates are provided in Column F.
k—Rates also apply from sideline points to headline points.
m—Will also apply from Index 7430 Decoto, Cal., to points on NP or UP, via WP, Bieber, Cal., GN, Portland, Ore., thence NP or UP.
n—Applies only on Pipe or Tubing, plate or sheet, U. S. Standard Gauge 16 or thicker, as described in Item 7145, outside diameter 20 inches or over. Not subject to Rule 24 of WC, nor to provisions of paragraphs 2 and 3 of Item 1017.
o—Applies only to Group 26 points on NP, SP, SP&S and UP; Group 27 points on GN and SP&S and 17830 Wishram, Wash.
p—Fabrication in transit privileges authorized by Item 1130 series will not apply.
r—Applies via routes in Section 6 in connection with SP to El Centro, Cal., thence SDAE Division, Cal., TyT, San Ysidro, Cal., SDAE.
s—Not subject to transit privileges authorized by Item 1130 at points in California, east of Colton, Cal.
u—Does not apply from or to Group 19 points on ATSF.
v—Applies only from 641 Kaiser, Cal., or d5971 Kaiser, Cal.
w—Applies only on Skelp, in coils and not over .25 of one per cent carbon (subject to Notes 1 and 2).
(2)Min. wt. 30,000 lbs.
(4)Min. wt. 40,000 lbs., except as noted.
(6)Min. wt. 60,000 lbs., except as noted.
(8)Min. wt. 80,000 lbs., except as noted.
(10)Min. wt. 100,000 lbs.
(D)Applies Southbound only.
(T)Rates in cents per 2,000 lbs.
Note 1—The bill of lading and shipping order to include the clause "Not over .25 of one per cent carbon."
Note 2—Applies only on shipments in open top cars not protected by tarpaulin or other protective coverings.

For Explanation of (other) Reference Marks, see Item 10.

[fol. 562]

410

NOT subject to Increases referred to in Items X-175, X-196 or X-206.
Subject, except as noted, to Increases referred to in Item X-212 and Supplement 130 (X-223 series).

20th Revised Page.....333B
Cancels 19th Revised Page.....333B

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1282
CTC.....142

SECTION 6—CARLOAD COMMODITY RATES, IN CENTS PER 100 LBS.
See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Iron or Steel Articles, as described in Items 7140 to 7155. Item 7189-T
For list of articles taking Column A, B, C, E, F, G, H, J or K rates, see Items 7140 to 7155.

TO (Except as Noted) (CJT-1270)	Column	FROM (Except as Noted) Group 15 (San Francisco) Group 16 (Port Chicago)			Group 17A (Los Angeles)		Group 17D (Santa Barbara)	Group 19 (Los Angeles) (12)641 Kaiser.....Cal. (14)2010 Torrance..... " (15)5971 Kaiser..... "		
		MINIMUM WEIGHT (LBS.) (40)	(30)	(30)	(40)	(30)	(30)	(30)	(30)	(30)
⊕Group 29A (Everett)....	A,E,F,G,H.....	113	.....	(13)92	134	.....	(14)105	.....	&gm(m)134	.....	&gm(m)(14)105
	C.....	113	(5)(17)92	δ(13)92	134	(5)(17)105	δ(14)105	.....	&gm(m)134	&gm(5)(17)(m)105	&gm δ(m)(14)105
	J.....	.....	(1)84 (13)94	.....	.....	105 (14)115	.....	(14)115	.....	&gm(m)105 &gm(m)(14)115	.....
⊕Group 29B (Bellingham), except 11025 Anacortes, Wash.....	A,E,F,G,H.....	119	.....	(13)97	139	.....	(14)111	.....	&gm(m)139	.....	&gm(m)(14)111
	C.....	119	(5)(17)97	δ(13)97	139	(5)(17)111	δ(14)111	.....	&gm(m)139	&gm(5)(17)(m)111	&gm δ(m)(14)111
	J.....	.....	(1)(13)94	.....	.....	(14)115	.....	(14)115	.....	&gm(m)(14)115	.....
Group 30 (Ellensburg)... Group 31 (Yakima)... Group 32 (Sunnyside). Group 33 (Kennewick) Group 34 (Walla Walla)..... Group 35 (Dayton)... Group 36 (Spokane)...	A,E,F,G.	113	.....	(13)92	134	.....	(14)105	.....	134	.....	(14)105
	δB.....	(7)(13)149	.....	.....	.....	.....	.....	.....	.....	.....	.....
	C.....	113	(5)(17)92	(13)92	134	(5)(17)105	(14)105	.....	134	(5)(17)105	(14)105
	H.....	113	.....	(13)92	134	.....	(14)105	.....	134	.....	(14)105
	J.....	.....	(13)84	.....	.....	105	.....	.....	.....	105	.....
	K.....	(20)203	.....	.....	(20)220	.....	.....	.....	(20)220	.....	.....

(1)Will also apply from Index 7430 Decoto, Cal., to points on NP or UP via WP, Bieber, Cal., GN, Portland, Ore., thence NP or UP.

(7)To or from points on NP, rates apply only via routes provided in Section 6 in connection with SP to Portland (Park St.) or East Portland, Ore., on SP, thence SP&S, Pasco, Wash., NP, or vice versa.

(12)Applies via ATSF, Barstow, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., or vice versa.

(13)Applies via SP, Colton, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., or vice versa.

(14)Applies via PE, Los Angeles, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., or vice versa.

(25)Rates also apply from sideline points to headline points.

(a) Rates to points on NP or UP in Groups 31, 32 and 33 will also apply from Index 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP or UP.

(b) Rates to Group 34 points, viz.:—13465 Walla Walla and 13487 Walair, Wash., on NP and (m)19310 Walla Walla, Wash., on UP apply also from Index 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP or UP.

(14) (c) Rates to Group 35 and 36 points on NP and UP apply also from Index 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP or (m)UP.

(d) Rates to Group 36 points on CamP and WI&M apply also from Index 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence via following routes:
NP (via Pasco, Wash.), Riparia, Wash., CamP UP, (m)Riparia, Wash., CamP NP, Palouse, Wash., WI&M

(17)Applies only on Pipe or Tubing, plate or sheet, U. S. Standard Gauge 16 or thicker, as described in Item 7145, outside diameter 20 inches or over. Not subject to Rule 24 of WC, nor to provisions of Paragraphs 2 and 3 of Item 1017.

(18)Rates apply from sideline points to headline points only.

(m)Applies only via Wallula, Wash.

(20)Min. wt. 30,000 lbs.

(30)Min. wt. 40,000 lbs., except as noted.

(40)Min. wt. 80,000 lbs.

(X)Expires as per Item 20.

δ Does not apply on articles described by (17) reference mark, during period rate flagged with "(X)" and (17) references are in effect.

g—Does not apply from or to 641 Kaiser, 2010 Torrance or 5971 Kaiser, Cal.

m—Applies only via Routes C-110 or U-40 provided in Section 7 and does not apply from or to points on ATSF.

⊕For rates in effect, prior to effective date hereof, see 26th Revised Page 334B and 27th Revised Page 334C.

For Explanation of other Reference Marks, see Item 10.

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[fol. 563]

411

NOT subject to Increases referred to in Items X-175, X-196 or X-206.
Subject, except as noted, to Increases referred to in Item X-212.

19th Revised Page.....333C
Cancels 18th Revised Page.....333C

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1282
CTO.....142

SECTION 4—CARLOAD COMMODITY RATES, IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number, and indicates the line on which the point is located.

Item 7160-J

Iron or Steel Articles, as described in Items 7140 to 7155.
For list of articles taking Columns A, C, E, F, G, H or J rates, see Items 7140, 7145, 7150 and 7155.

FROM / Except as Noted / TO	Column	Group 15 (San Francisco) Group 16 (Port Chicago)			Group 17A (Los Angeles)			Group 19 (Los Angeles) 641 ⑭Kaiser.....Cal. ⑮815 Torrance..... " 2010 ⑭Torrance..... " 5871 ⑭Kaiser..... "		
		MINIMUM WEIGHT (LBS.)								
		40,000	60,000	80,000	40,000	60,000	80,000	40,000	60,000	80,000
Group 37 (Sand Point)....	A,E,F,G	128	.....	⑭106	149	.....	⑭120	149	.....	⑭120
	C	128	⑫⑭106	⑭106	149	⑫⑭120	⑭120	149	⑫⑭120	⑭120
	H	128	.....	⑭106	149	.....	⑭120	149	.....	⑭120
Group 38 (Wallace).....	A,C,E,F,G	128	.....	⑭106	149	.....	⑭120	149	.....	⑭120
	H	128	.....	⑭106	149	.....	⑭120	149	.....	⑭120
Group 39 (Huntington)....	A, E, F, G	113	.....	⑭92	134	.....	⑭105	134	.....	⑭105
	C	113	⑫⑭92	⑭92	134	⑫⑭105	⑭105	134	⑫⑭105	⑭105
	H	113	.....	⑭92	134	.....	⑭105	134	.....	⑭105
	J	.....	⑫92	.....	.....	112	.....	.....	112	.....
▲8080 Bremerton.....Wash.	A,E,F,G,H	③120	.....	③97	③140	.....	③112	.....	.....	.....
	C	⑪120	.....	③97	③140	.....	③112	.....	.....	③127
	J	.....	③81	.....	.....	③102	.....	.....	.....	.....
‡8180 New Westminster .....B. C.	A	125	.....	⑭103 ∮⑫96	146	.....	⑭118 ∮⑫110	.....	.....	.....
	E, F, G, H	125	.....	⑭103	146	.....	⑭118	.....	.....	.....
	C	125	◆⑭103 ◆∮⑫96	⑭103 δ∮⑫96	146	◆⑭118 ◆∮⑫ 110	⑭118 δ∮⑫110	.....	.....	.....
8520 Grangeville.....Ida. 8590 Headquarters.... " 8635 Stites..... "	A,C,E,F,G	131	.....	110	152	.....	123	152	.....	123
	H	131	.....	110	152	.....	123	152	.....	123
b8660 Victoria.....B. C.	⑪A	.....	.....	109½	.....	.....	123½	.....	.....	.....
d8662 Prince George..B. C.	C	.....	⑰207	.....	.....	⑰221	.....	.....	.....	.....
8760 Vancouver.....B. C.	A	125	.....	∮⑫96 ⑭103	146	.....	∮⑫110 ⑭118	.....	.....	.....
	C	125	◆⑭∮96 ◆⑭103	⑭103 δ∮⑫96	146	◆∮⑫110 ◆⑭118	⑭118 δ∮⑫110	.....	.....	.....
	E, F, G, H	125	.....	⑭103	146	.....	⑭118	.....	.....	.....
8775 New Westminster .....B. C.	A	125	.....	⑭103 ∮⑫96	146	.....	⑭118 ∮⑫110	.....	.....	.....
	E, F, G, H	125	.....	⑭103	146	.....	⑭118	.....	.....	.....
	C	125	◆⑭103 ◆∮⑫96	⑭103 δ∮⑫96	146	◆⑭118 ◆∮⑫ 110	⑭118 δ∮⑫110	.....	.....	.....
a8960 Hilladale.....Wash.	J	.....	72	.....	.....	.....	.....	.....	.....	.....
8970 ①⑨Kent.....Wash.	A, C, E, F, G, H	111	.....	⑫90	131	.....	⑭102	.....	.....	.....
8980 ∮①Port AngelesWash.	A, C, E, F, G, H	151	.....	120	171	.....	134	.....	.....	.....
	J	.....	⑫108	.....	.....	124	.....	.....	.....	.....

⑫Expires as per Item 20.
◆Expires as per Item 20.
⑪Applies to 8080 Bremerton, Wash., only.
▲Change; no increase or reduction.
For Explanation of other Reference Marks, see Item 7160.2.

ISSUED DECEMBER 3, 1959

EFFECTIVE JANUARY 10, 1960

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[Col. 564]

412

SECTION 4—CARLOAD COMMODITY RATES, IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number, and indicates the line on which the point is located.

Item 7160.2-D

EXPLANATION OF ABBREVIATIONS

(Applies only in connection with rates making specific reference hereto)

①Via routes via Bieber, Cal., as provided in Section 6.
②Applies only via routes provided in Section 6 in connection with WP via Bieber, Cal., thence GN, Seattle, Wash., CMSP&P, Seattle, Wash., thence BFCF.
From Group 19, applies via routes provided in Section 6 via or in connection with UP via Salt Lake City, Utah, and Huntington, Ore., to Seattle, Wash., on UP, CMSP&P, Seattle, Wash., thence BFCF.
From 641 Kaiser and 815 Torrance, Cal., applies via ATSF, Barstow, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., to Seattle, Wash., on UP, CMSP&P, Seattle, Wash., thence BFCF.
③ From 2010 Torrance, Cal., applies via PE, Los Angeles, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., to Seattle, Wash., on UP, CMSP&P, Seattle, Wash., thence BFCF.
From 5071 Kaiser, Cal., applies via SP, Colton, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., to Seattle, Wash., on UP, CMSP&P, Seattle, Wash., thence BFCF.
④Via routes provided in Section 6 to Seattle, Wash., on GN, NP or UP, thence CMSP&P, Port Townsend, Wash., PTS, Discovery Jct., Wash., CMSP&P.
⑦Applies via routes in Section 6 in connection with SP to Portland (Park St.) or East Portland, Ore., thence UP, Chehalis, Wash., CMSP&P, or vice versa, or via SP, Portland (Park St.), Ore., GN or NP, Chehalis, Wash., CMSP&P, or vice versa.
⑪Rates also apply from sideline points to headline points.
⑭Applies only on Pipe or Tubing, plate or sheet, U. S. Standard Gauge No. 16 or thicker, as described in Item 7145, outside diameter 20 inches or over. Not subject to Rule 24 of WC, nor to provisions of paragraphs 2 and 3 of Item 1017.
㉒Will also apply from Index 7430, Decoto, Cal., to points on UP via WP, Bieber, Cal., GN, Portland, Ore., thence UP. This route does not apply to points on UP east of Pendleton, Ore., designated on Page 117 as Index Nos. 18930 to 19135, incl.
㉓Also applies from Index 7430, Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., NP or UP to Seattle, Wash., CMSP&P Port Townsend, Wash., PTS, Discovery Junction, Wash., CMSP&P.
㉔Except as noted, applies via ATSF, Barstow, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., or vice versa.
㉕Except as noted, applies via SP, Colton, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., or vice versa.
㉖Except as noted, applies via PE, Los Angeles, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., or vice versa.
♦Applies only as a proportional rate on traffic moving beyond ⁴New Westminster, B. C., via CN-W or CP-W, or Vancouver, B. C., via CN-W, CP-W, PGE, and their rail connections to destinations in British Columbia (except North Vancouver, B. C.), or to destinations in Alberta on the CN-W or CP-W.
§Rates also apply on shipments accorded transit privileges at Hoquiam, Wash., on CMSP&P, as provided in Part D, Item 16350 Series of NPCFB Tariff 117-B, ICC 935, via routes provided in Section 6, in connection with WP via Bieber, Cal., to Chehalis, Wash., on GN, thence CMSP&P, Port Townsend, Wash., PTS, Discovery Jct., Wash., CMSP&P.
‡Also applies via routes provided in Section 6 in connection with SP to Seattle, Wash., on UP, thence CMSP&P, Sumas, Wash.-Huntingdon, B. C., BCE, or vice versa.
δ Does not apply on articles described by ⑭ reference mark, during period rate flagged with "♦," ⑭ and § references, are in effect.
a—Also applies via Routes G-25 and N-30 as provided in Section 7.
b—Applies only via Routes G-10, N-11 and U-11, as provided in Section 7.
d—Via routes provided in Section 6 of Tariff, to New Westminster, B. C., on GN, thence CN-W.
ⓓNot subject to Increases referred to in Item X-212.

(JT-9089)

For Explanation of Reference Marks, see Item 10.

[fol. 565]

413

NOT subject to Increases referred to in Items X-175, X-196 or X-206.
Subject, except as noted, to Increases referred to in Item X-212 and Supplement 130 (X-222 series).

28th Revised Page.....334C
Cancels 27th Revised Page.....334C

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1282
OTC.....142

SECTION 4—CARLOAD COMMODITY RATES, IN CENTS PER 100 LBS.
See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number, and indicates the line on which the point is located.

Iron or Steel Articles, as described in Items 7140 to 7155. Item 7167-B
For list of articles taking Column A, C, E, F, G, H or J rates, see Items 7140, 7145, 7150 and 7155.

FROM (Except as Noted) TO (JT-7557) (CJT-1270)	Column	Group 15 (San Francisco) Group 16 (Port Chicago) (4)	(5)	(6)	Group 17A (Los Angeles) (4)	(5)	(6)	Group 17D (Santa Barbara) (4)	(5)	(6)	⑦Group 19 (Los Angeles) ⑦641 Kaiser.....Cal. ⑦615 Torrance..... " ⑧2010 Torrance..... " ⑧971 Kaiser..... " (4)	(5)	(6)
11360 Rock Island .....Wash.	A,E,F,G,H.....	113	.....	(2)102	134	.....	(2)105	....	.....	.....	.....	.....	.....
	C.....	113	(2)(5)102	(2)102	134	(2)(5)105	(2)105	....	.....	.....	.....	.....	.....
	J.....	.....	84	.....	.....	105	.....	....	.....	.....	.....	.....	.....
11415 Mansfield .....Wash.	A,C,E,F,G,H..	133	.....	(2)111	153	.....	(2)124	....	.....	.....	.....	.....	.....
①12083 Parkdale .....Ore.	A,C,E,F,G,H..	110	.....	87	130	.....	101	....	.....	.....	.....	.....	.....
12357 Bremerton .....Wash.	A,E,F,G,H.....	120	.....	97	140	.....	112	....	.....	.....	.....	.....	.....
12389 Bangor... a	C.....	(2)120	◆(2)97 (2)81	97	(2)140	◆(2)112	112	....	.....	.....	.....	.....	(2)127
	J.....	.....	.....	.....	.....	102	.....	....	.....	.....	.....	.....	.....
12300 Everett .....Wash. 12380 Bellingham a 12385 South Bellingham.. a	Cancel; ⁿGroups 29A or 29B rates in Item 7159 apply.												
12000 Sumas..Wash.	A.....	119	.....	(2)97 ƒ(2)96	139	.....	(2)111 ƒ(2)110	....	.....	.....	.....	.....	.....
	C.....	119	◆(2)97 ◆(2)96	(2)97 ƒ(2)96	139	◆(2)111 ◆(2)ƒ 110	(2)111 ƒ(2)110	....	.....	.....	.....	.....	.....
	E,F,G,H. J.....	119	..... (2)94	(2)97	139	..... (2)115	(2)111	....	.... (2)115	....	....	....	....
ƒ(2)14940 Eugene .....Ore.	A, E.....	s100 ①90	.....	ⁿh(2)78	①110 ⁿas 120	.....	ⁿ(2)92	....	.....	.....	.....	.....	.....
14965 Bend....Ore. 18710 Bend..... a	A.....	(2)100	.....	(2)78	(2)120	.....	(2)92	151	.....	121	bu(2)(3) 120	.....	bu(2)(3) 92
	C.....	(2)100	◆(2)78	(2)78	(2)120	◆(2)92	(2)92	....	.....	.....	bu(2)(3) 120	bu(2)(3) ◆92	bu(2)(3) 92
	E,F,G,H.	(2)100	.....	(2)78	(2)120	.....	(2)92	....	.....	.....	bu(2)(3) 120	.....	bu(2)(3) 92

①Via routes provided in Section 6 to Hood River, Ore., on UP, thence MtH.
②Via Route U-60 provided in Section 7 for vice versa.
③Applies via ATSF, Barstow, Cal., thence via Route U-61 provided in Section 7.
④Applies via PE, Los Angeles, Cal., thence via Route U-61 provided in Section 7.
⑤Applies via SP, Colton, Cal., thence via Route U-61 provided in Section 7.
⑥Rates also apply from sideline points to headline points. u—Does not apply from or to Group 19 (Los Angeles) on ATSF.
⑦Will also apply from Index 7430, Decoto, Cal., to points on NP or UP via WP, Bieber, Cal., GN, Portland, Ore., thence NP or UP.
⑧Rates apply from sideline points to headline points only.
⑨Applies only on Pipe or Tubing, plate or sheet, U. S. Standard Gauge 16 or thicker, as described in Item 7145, outside diameter 20 inches or over. Not subject to Rule 24 of WC, nor to provisions of paragraphs 2 and 3 of Item 1017.
⑩Does not apply to 12359, Bangor, Wash. ⑪Expires as per Item 20.
(2)Min. wt. 40,000 lbs. (3)Min. wt. 60,000 lbs. (4)Min. wt. 80,000 lbs.
ƒApplies only as a proportional rate on shipments destined to points in British Columbia (except North Vancouver, B. C.), on the BCE or CP-W, or via BCE for furtherance to CN-W destination points, or as a proportional rate on shipments destined points in Alberta on the CN-W or CP-W. ◆Expires as per Item 20.
§Reduction, except as noted.
a—Does not apply on Column E articles for which rates are named in Item 7205.
h—Does not apply on shipments consisting exclusively of articles for which rates are provided in Column F.
s—Applies southbound only. ①Not subject to Increases referred to in Item X-212.
For Explanation of other Reference Marks, see Item 10.

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NOT subject to Increases referred to in Items X-175, X-196 or X-206.
Subject, except as noted, to Increases referred to in Item X-212.

20th Revised Page.....334D
Cancels 19th Revised Page.....334D

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1352
CTC.....142

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 7168-T

Iron or Steel Articles, as described in Items 7140 to 7155.
For list of articles taking Column A, B, C, D, E, F, G, H or J rates, see Items 7140, 7145, 7150 and 7155.

TO (Except as Noted)	COLUMN	FROM (Except as Noted) Group 15 (San Francisco) Group 16 (Port Chicago) MINIMUM WEIGHT (LBS.)			Group 17A (Los Angeles) MINIMUM WEIGHT (LBS.)		
(JT-8448)		(40)	(40)	(40)	(40)	(40)	(40)
14985 Terrebonne....Ore.	A, E, F, G, H.....	(14)100	.....	(14)78	(14)120	.....	(14)92
15000 Madras..... "	C.....	(14)100	.....	(14)(14)78	(14)120	.....	(14)92
	J.....	.....	72	.....	.....	92	.....
15245 Ruby.....Ore.	A, E, F, G, H.....	100	.....	78	120	.....	92
15255 Gresham..... "	C.....	100	(14)(E)78	78	120	(14)(E)92	92
15265 Boring..... "							
15290 (5)Port Townsend .....Wash.	A, C, E, F, G, H....	151	.....	120	171	.....	134
15400 (4)Port Townsend "	J.....	.....	103	.....	.....	124	.....
15405 (4)Port Angeles .....Wash.	A, C, E, F, G, H....	151	.....	120	171	.....	134
	J.....	.....	(17)103	.....	.....	124	.....
15810 Marcola.....Ore.	A, C, E, F, G, H....	(3)110	.....	(11)(16)87	(3)130	.....	(14)(16)101
	B.....	(3)124	.....	.....	(3)170	.....	.....
	D.....	.....	(3)103	.....	.....	(3)144	.....
	J.....	(3)124	(3)78	.....	(3)152	(3)99	.....
♣18529 Rockwood.....Ore.	For rates, see Item 7158½ series.						
18665 Madras.....Ore.	Cancel; ▲for rates, see Item 7173 series.						
18690 Terrebonne..... "							

(2)Does not apply from points on ATSF in connection with SP.
(3)Does not apply from Group 15 points on ATSF in connection with SP.
(4)Via Routes G-1, G-2, N-6 or U-5 provided in Section 7.
(5)Via Routes G-72, N-61 or U-71 provided in Section 7.
(11)Does not apply from or to Group 15 points on ATSF in connection with SP.
(14)Does not apply from or to points on ATSF in connection with SP.
(16)Rates also apply from sideline points to headline points.
(16)Rate northbound also applies on Couplings, viz.: Pipe or Tubing (not cast or wrought), plate or sheet, 16 gauge or thicker, and/or Pipe or Tubing, wrought, 16 gauge or thicker.
(17)Also applies from Index 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., NP, or UP, Seattle, Wash., thence BBT.
(18)Applies only on Pipe or Tubing, plate or sheet, U. S. Standard Gauge No. 16 or thicker, outside diameter 20 inches or over. Not subject to Rule 24 of WC nor to provision of Paragraphs 2 and 3 of Item 1017.
(40)Min. wt. 40,000 lbs. (40)Min. wt. 60,000 lbs. (40)Min. wt. 80,000 lbs.
(E)Expires as per Item 20.
▲Change; no increase or reduction.
♣Reduction.

ISSUED FEBRUARY 10, 1960

EFFECTIVE MARCH 18, 1960

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Subject, except as noted, to Increases referred to in Items X-212 and X-223.

1st Revised Page.....335AA
Cancels Original Page.....335AA

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1352
CTC.....142

SECTION 4—CARLOAD COMMODITY RATES, IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number, and indicates the line on which the point is located.

Iron or Steel Articles, as described in Items 7140 to 7155. Item 7173.4-A
For list of articles taking Column A, B, C, D, E, F, G, H or J rates, see Items 7140, 7145, 7150 and 7155.

FROM	TO (Except as Noted)	Column	Group 15 (San Francisco) Group 16 (Port Chicago)			Group 17A (Los Angeles)			(28)Group 19 (Los Angeles) on UP		
			MINIMUM WEIGHT (LBS.)								
			(40)	(40)	(40)	(40)	(40)	(40)	(40)	(40)	(40)
18003 Fir.....Ore.		A, E, F, G, H..	(14)100	.....	(14)78	(14)120	.....	(14)92	(14)120	.....	(14)92
18515 Ward..... "		C.....	(14)100	♦(17)78	(14)78	(14)120	♦(17)92	(14)92	(14)120	♦(17)92	(14)92
18525 Montaville..... "		D.....	.....	92	.....	.....	.....	.....	.....	.....	.....
18530 Fairview..... "											
to											
18620 Dillon..... "											
18665 Madras.....Ore.		A, E, F, G, H..	(14)100	.....	(14)78	(14)120	.....	(14)92	(14)120	.....	(14)92
18690 Terrebonne..... "		C.....	(14)100	.....	(14)(16)78	(14)120	.....	(14)92	(14)120	.....	(14)92
		J.....	.....	(51)72	.....	.....	92	.....	.....	92	.....
		A.....	125	.....	(15)103	146	.....	(15)118	.....	.....	.....
					ƒ(15)96			ƒ(15)110			
20360 Vancouver.....B. C.		C.....	125	♦(17)ƒ96	(15)103	146	♦(17)ƒ110	(15)118	.....	.....	.....
				♦(17)103	ƒ(15)96		♦(17)118	ƒ(15)110			
		E, F, G, H.....	125	.....	(15)103	146	.....	(15)118	.....	.....	.....

(14)Rates also apply from sideline points to headline points.
(16)Rate northbound also applies on Couplings, viz.: Pipe or Tubing (not cast or wrought), plate or sheet, 16 gauge or thicker, and/or Pipe or Tubing, wrought, 16 gauge or thicker.
(17)Applies only on Pipe or Tubing, plate or sheet, U. S. Standard Gauge 16 or thicker, as described in Item 7145, outside diameter 20 inches or over. Not subject to Rule 24 of WC, nor to provisions of paragraphs 2 and 3 of Item 1017.
(51)Will also apply from Index 7430 Decoto, Cal., to points on NP or UP, via WP, Bieber, Cal., GN, Portland, Ore., thence NP or UP.
(40)Min. wt. 40,000 lbs. (15)Min. wt. 60,000 lbs. (28)Min. wt. 80,000 lbs.
ƒApplies only as a proportional rate on traffic moving beyond Vancouver, B. C., via CN-W, CP-W, Pacific Great Eastern Ry., and their rail connections to destinations in British Columbia (except North Vancouver, B. C.), or to destinations in Alberta on the CN-W or CP-W.
(♦)Expires as per Item 20.
♦Expires as per Item 20.
For Explanation of other Reference Marks, see Item 10.

ISSUED MARCH 17, 1961

EFFECTIVE APRIL 23, 1961

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C—2400—Authy. F-8020.

Correction 18015

335AA

[fol. 568]

416

[fol. 569]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 15

Copies of pages of Pacific Southcoast Freight Bureau Tariff 1-S, ICC 1352, containing present rates on Automobiles from Oakland and Decoto, Cal. to points in Oregon, Washington and Northern Idaho, via Western Pacific to Bieber, Cal., Great Northern Railway to Portland, Oregon, thence Northern Pacific Railway Company or Union Pacific Railroad Company.

NOT subject to Increases referred to in Items X-175, X-196, X-206, X-212 or Supplement 130 (X-223 series).

36th Revised Page.....472A Cancels 35th Revised Page.....472A	PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent TARIFF 1-S	ICC.....1352 CTC.... 142

SECTION 4—CARLOAD COMMODITY RATES, IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The Number prefixed to a station name is the Index Number and indicates the line on which the point is located.

COMMODITY	BETWEEN (except as noted in individual items)	AND	Rate	Item
Vehicles and Other Articles, viz.: (See Note) ⑥Trailers, vehicle, with or without wheels, KD, or set up, without motive power. ①Bodies, auto or truck, freight or passenger, finished or not finished, loose or in packages. ‡Lift Vans, SU. Min. wt. 12,000 lbs., except as noted. ①Does not apply to shipments of Freight Trailers or Freight or Passenger Bodies in straight carloads from and to points for which rates are provided in Items 4467, 10320, 10330 to 10370, incl. ⑥Does not apply on Logging Trailers in straight carloads from and to points for which rates in Item 10304 will apply. Note—Provisions of Rule 34 of WC or Item 1017 of this Tariff will not apply. ⑩Min. wt. 10,000 lbs. (JT-9839)	Group 28 (Seattle)..... Group 29A (Everett)..... Group 31 (Yakima)..... Group 32 (Sunnyside)..... Group 33 (Kennewick)..... Group 34 (Walla Walla).... Group 35 (Dayton)..... Group 36 (Spokane)..... 11210 Wenatchee.....Wash. 11217 Welch..... "	Group 15 (San Francisco)... Group 16 (Port Chicago)... Group 17A (Los Angeles)...	263 263 364 ⑩413	10303-U
	Group 31 (Yakima)..... Group 32 (Sunnyside)..... Group 33 (Kennewick)..... Group 34 (Walla Walla).... Group 35 (Dayton)..... Group 36 (Spokane).....	Group 19 (Los Angeles).....	364	
	11565 Spokane.....Wash. 14300 Spokane..... " 18040 Spokane..... " 20270 Spokane..... "	3825 Reno.....Nev. 7820 Reno..... "	s228 s228	
	Group 28 (Seattle) on ⒶNP, ⒸPC, ⒷUP..... Group 36 (Spokane) on ⒹCamP, ⒾNP, ⒻSI, ⒼUP, ⒽWI&M..... Ⓘ12800 Everett.....Wash. Ⓘ13125 Yakima..... " Ⓘ13313 Richland..... " Ⓘ13314 Hanford Works... " Ⓖ19477 Hanford Works... " Ⓖ19480 Richland..... " Ⓖ19615 Yakima..... "	7410 Oakland.....Cal. 7430 Decoto..... "	n263 n263	

Ⓐ Rates to points on NP will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP.

Ⓑ Rates to points on UP will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence UP.

Ⓒ Rates to points on PCRR will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., NP or UP, Black River Jct., Wash., PCRR.

Ⓓ Applies via WP, Bieber, Cal., GN, Portland, Ore., NP (via Pasco, Wash.), Riparia, Wash., CamP or WP, Bieber, Cal., GN, Portland, Ore., UP, Riparia, Wash., CamP.

Ⓕ To Index 17303 Parkwater, Wash., applies via WP, Bieber, Cal., GN, Portland, Ore., NP or UP, Spokane, Wash., SI. To Index 17305 Millwood, Wash., to and including 17348 Coeur D'Alene, Idaho, inclusive, applies via WP, Bieber, Cal., GN, Portland, Ore., UP, Spokane, Wash., SI.

Ⓖ Applies via WP, Bieber, Cal., GN, Portland, Ore., UP.

Ⓗ Applies via WP, Bieber, Cal., GN, Portland, Ore., NP, Palouse, Wash., WI&M.

Ⓘ Applies via WP, Bieber, Cal., GN, Portland, Ore., NP.

s—Applies southbound only.

n—Applies northbound only.

For Explanation of other Reference Marks, see Item 10.

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▲22nd Revised Page.....473A
Cancels 21st Revised Page.....473A

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1352
CTC.....142

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 10330-Q

Applies only in connection with rates making specific reference to this item

Column A rates apply on:

Vehicles, motor, and **Other Articles** (see Note 2), viz.:

Automobiles, freight, set up (see Notes 3 and 4)
Automobiles, passenger, set up (see Notes 1, 3 and 4)
Chassis, set up, with or without seat cabs
δ **Trailers**, freight, loose

Straight or mixed carloads, unless otherwise provided in rate item.

Min. wt. 10,000 lbs., unless otherwise provided in rate item.

Column B rates apply on:

Vehicle Parts, viz.:

Bodies (automobile), freight or passenger, finished or unfinished, set-up on skids (see Note 2).....Carloads.
Trailer Van Bodies, freight, SU, without running gear, 20 feet or longer in length.

Minimum weight 10,000 lbs., unless otherwise provided in rate item.

Note 1—With each Passenger Automobile not radio equipped, there may be included one Radio Receiving Set (automobile type), in boxes, at the rate applicable on the Passenger Automobile.

Note 2—Rates apply also on finished or unfinished extra parts (not otherwise provided for) of articles subject to this note, except that rates do not apply on Cyclometers, Headlights, Horns, Lamps, Searchlights, Speedometers nor Windshields. The aggregate weight of such parts is limited to 15 per cent of the total weight of the carload or of the minimum carload weight when greater than the actual weight, and must be shown separately on bill of lading by shipper.

Note 3—In connection with shipments of freight or passenger automobiles, rate includes loading at origin. When at its option such services are not performed by railroad, but are performed by shipper, an allowance will be paid to such shipper equal to actual cost of performing such service, but not to exceed $2.00 per automobile, maximum of $8.00 per carload for loading.

Note ◆⊕4—Rate includes unloading and delivery to locations with pick-up and delivery limits as defined in PSFB 247-J, ICC 1602 of PSFB, Agent, or NPCFB 95-L, ICC 977 of NPCFB, Agent (see Note 5) at all points. Unloading and delivery performed at its option by the railroad is limited to a maximum of four (4) automobiles per carload.

When at its option, such services are not performed by railroad, but are performed by receiver, an allowance will be paid to receiver equal to actual cost of performing such services, but not to exceed $5.00 per automobile, maximum of $20.00 per carload for unloading and delivery.

Note 5—Where PU&D limits are not defined in PSFB Tariff 247-J or NPCFB Tariff 95-L, rates will include unloading and delivery to locations within city limits, or if city limits are not defined, to locations within one mile of carrier's freight station.

δ Does not apply on Logging Trailers in straight carloads from points in Group 17A; rates in Item 10304 and class or combination rates will apply.

◆In connection with the CamP the provisions of this note apply only at the following points:

Craigmont.....Ida.
Grangeville.....Ida.
Lewiston.....Ida.
Orofino.....Ida.

⊕When destined points on UP, the provisions of this note apply only at the following points:

Aberdeen.....Wash.
Arlington.....Ore.
Athena.....“
Auburn.....Wash.
Baker.....Ore.
Bend.....“
Castle Rock.....Wash.
Centralia.....“
Chehalis.....“
Cheney.....“
Colfax.....“
Condon.....Ore.
Dayton.....Wash.
Dishman.....“
Elgin.....Ore.
Enterprise.....“
Fir.....Ore.
Garfield.....Wash.
Grandview.....“
Grass Valley.....Ore.
Haines.....“
Heppner.....“
Hermiston.....“
Hood River.....“
Hoquiam.....Wash.
Huntington.....Ore.
Joseph.....“
Kellogg-Wardner.....Ida.
Kelso.....Wash.
Kennewick.....“
Kent.....“
La Grande.....Ore.
Longview.....Wash.
Madras.....Ore.
Milton-Freewater.....“
Montesano.....“
Moscow.....Ida.
Olympia.....Wash.
Pendleton.....Ore.
Pilot Rock.....“
Pomeroy.....Wash.
Pullman.....“
Puyallup.....“
Redmond.....Ore.
Richland.....Wash.
Rockford.....“
Seattle.....Wash.
Spokane.....“
Sumner.....“
Sunnyside.....“
Tacoma.....“
Tekoa.....“
The Dalles.....Ore.
Umatilla.....“
Vancouver.....Wash.
Wallace.....Ida.
Walla Walla.....Wash.
Wallowa.....Ore.
Wasco.....“
Winlock.....Wash.
Woodland.....“
Yakima.....“

▲Change; no increase or reduction.

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EFFECTIVE SEPTEMBER 15, 1960

Issued by M. A. NELSON, Tariff Publishing Officer,
717 Market Street, San Francisco 3, Cal.

C—2500—Authy. C-7776.

NOT subject to Increases referred to in Items X-178, X-196, X-206 or X-212.
Subject, except as noted, to Increases referred to in Supplement 120 (X-223 series).

4th Revised Page.....473B Cancels 3rd and 2nd Revised Page 473B

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1282
OTC.....142

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 10340-Y Cancels 10340-X and 10340-W

Vehicles, motor, or **Vehicle Parts** and **Other Articles**, as described and subject to min. wt. and other provisions in Item 10330.
For list of articles taking Column A or B rates, see Item 10330.

TO ▼ FROM ▶	Group 15 (San Francisco) on ATSF, SN or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond (Via Route 2 below)	Cal. 715 Los Angeles 796 Rivera 806 Inglewood 823 Long Beach (Via Route 1 below)		Group 17A (Los Angeles) (Via Route 2 below)	
	COLUMNS					
	A	A	A	B	A	B
Group 25 (Klamath Falls)	148	①148	230	317	⑤230	276
Group 26 (Portland), except as shown		219			‡300	328
Group 27 (Portland), except as shown	a219		300	328		
Group 28 (Seattle), except as shown	b Ⓔ227 b ‡247	Ⓔ227 ‡247	Ⓔ308 ‡328	328	Ⓔ308 ‡328	328
Group 29A (Everett)	247	247	328	328	328	328
Group 29B (Bellingham)	300	300	363	363	363	363
8450 Lewiston..Ida.	c348	348			412	412
8485 Culdesac..Ida. 8490 Rubens.... " 8495 Craig Jct.. " 8500 Craigmont. " 8510 Cottonwood " 8520 Grangeville "	c382	382			455	455
8555 Peck.....Ida. 8570 Orofino.... "	c369	369			437	437
8625 Kamiah...Ida. 8630 Kooskia... "	c431 c436	431 436			490 494	490 494

TO ▼ FROM ▶	Group 15 (San Francisco) on ATSF, SN or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond (Via Route 2 below)	Cal. 715 Los Angeles 796 Rivera 806 Inglewood 823 Long Beach (Via Route 1 below)		Group 17A (Los Angeles) (Via Route 2 below)	
	COLUMNS					
	A	A	A	B	A	B
9060 Enumclaw .....Wash.	247		328	328		
10005 Cle Elum .....Wash.	252		328	328		
10035 Ellensburg. "	262		328	328		
10105 ⑥Moses Lake.... "	346	346	406	406	406	406
10150 Rosalia.... "		348			412	412
10415 Prineville.Ore.	②264	③264	③328	③328	③328	③328
10620 Chiloquin.Ore. 10645 Kirk..... " 10685 Chemult... "	219		300	328		
10710 Vancouver .....Wash.	219	219	300	328	300	328
10940 Edmonds .....Wash. 10960 Marysville. " 10980 Stanwood.. " 10995 Mt. Vernon " 11000 Burlington. "	247	247	328	328	328	328
11030 Sedro-Woolley. .....Wash.	247	247	328	328	328	328

Route 1—Via routes provided in Section 6 in connection with WP via Bieber, Cal., except as noted.
Route 2—Via routes provided in Section 6 in connection with SP, except as noted.
①Does not apply from Richmond, Cal. (Index 25).
②Via Route 1 above to Prineville Jct., Ore., on OT, thence CofP.
③Via Route 2 above to Prineville Jct., Ore., on OT or UP, thence CofP.
⑤Does not apply from points on ATSF.
⑥In connection with routes in Section 6, applicable via Bieber, Cal., applies only on traffic originating at or destined to points on ATSF, SN, TS or WP. In connection with routes in Section 6, applicable to or from Portland (Park St.) or East Portland, Ore., thence via UP, Chehalis, Wash., CMSP&P, or vice versa, applies only in connection with traffic originating at or destined to points on ATSF, PE, SP or VE.
Ⓔ Expires as per Item 20.
‡ Does not apply during period of effectiveness of rates prefixed Ⓔ.
For Explanation of other Reference Marks, see Items 10 and 10340.5.

ISSUED JANUARY 18, 1961
Issued on 10 days' notice; ICC Permission 90759.

EFFECTIVE JANUARY 31, 1961

C—3400—Authy. RM-8417.

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717 Market Street, San Francisco 3, Cal.

Correction 17872

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 10340.5

EXPLANATION OF REFERENCE MARKS

(Applies only in connection with rates making specific reference hereto)

a—Also applies from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., to Willbridge, East St. Johns, St. Johns (Portland Municipal Terminal 4) and North Portland, Ore., and Vancouver, Wash., on NP via WP, Bieber, Cal., GN, Portland, Ore., NP; also to East Portland, Albina, St. Johns, Kenton and North Portland, Ore., and Vancouver, Wash., on UP via WP, Bieber, Cal., GN, Portland, Ore., UP.

b—(1) Rates to points on NP will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP.
(2) Rates to points on UP will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence UP.
(3) Rates to points on PCRR will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., NP or UP, Black River Jct., Wash., PCRR.

c—Rates apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., NP (via Pasco, Wash.), Riparia, Wash., CamP, or via WP, Bieber, Cal., GN, Portland, Ore., UP, Riparia, Wash., CamP.

⑪Not subject to Increases referred to in Items X-175, X-196, X-206 or X-212.

②Not subject to Increases referred to in Item X-175. (RA 6326)

△Item 10340 formerly shown on 21st Revised Page 474 transferred to Original Page 473B.
★Change.

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

▲Item 10360-T

Vehicles, motor, or Vehicle Parts and Other Articles, as described and subject to min. wt. and other provisions in Item 10330.
For list of articles taking Columns A or B rates, see Item 10330.

TO ▼	FROM▶▶ Group 15 (San Francisco) on ATSF, SN, or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond...Cal. (Via Route 2 below)	715 Los Angeles, Cal. 796 Elsara..... " 803 Inglewood..... " 823 Long Beach..... (Via Route 1 below)		Group 17A (Los Angeles) (Via Route 2 below)	
	COLUMNS					
	A	A	A	B	A	B
11635 Chewelah..Wash.	384	384	465	462	465	462
11660 Colville...Wash.	384	384	465	477	465	477
11805 Republic..... "	384	384	465	506	465	506
11840 Newport..... "	385	385	459	459	459	459
11850 Priest River..Ida.	396	396	461	461	461	461
11875 Sand Point... "	396	396	474	474	474	474
11905 Bonners Ferry..... "	420	420	489	493	489	493
12357 Bremerton.Wash.	a262	262	.....	....	328	328
12360 Bangor..... "	a262	262	.....	....	328	328
12680 Kirkland..Wash.						
12730 Bothell..... "						
12745 Issaqua..... "	a247	247	.....	....	328	328
12755 Snoqualmie Falls..... "						
12760 Snoqualmie.. "						

TO ▼	FROM▶▶ b7410 Oakland...Cal. b7430 Decoto.....	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond...Cal. (Via Route 2 below)	Group 17A (Los Angeles) (Via Route 2 below)
	COLUMNS		
	A	A	A, B
12765 North Bend .....Wash.			
12790 Snohomish... "			
12800 Everett..... "	247	247	328
12810 Arlington.... "			
12845 Sedro-Woolley "			
12880 Bellingham .....Wash.	300	300	363
12885 South Bellingham..... "	300	300	363
12900 Sumas..... "	300	309	372
13000 Enumclaw... "	247	247	328
13045 Orting..... "	247	247	328
13060 Cle Elum.... "	258	258	328
13085 Roslyn..... "	262	262	328
13105 Ellensburg... "	262	262	328
13125 Yakima..... "	262	262	328
13135 Moxee City.. "	270	270	328
13180 Naches..... "	270	270	328
13230 Wapato...Wash.			
13255 Toppenish.... "			
13270 Sunnyside.... "			
13275 Grandview... "	262	262	328
13300 Prosser..... "			
13315 Kennewick... "			
13320 Pasco..... "			
13465 Walla Walla .....Wash.	290	290	353
13530 Waitsburg... "	304	304	365
13565 Dayton..... "	309	309	373
13615 Athena.....Ore.	290	290	350
13645 Pendleton.... "	282	282	344
13735 Connell...Wash.	320	320	383
13885 Lind..... "	320	320	383
13900 Ritzville..Wash.	330	330	393
13925 Sprague..... "	346	346	406
13950 Cheney..... "	348	348	412
13975 Reardan..... "	348	348	412
13985 Davenport... "	348	348	412
14005 Creston...Wash.	②348	②348	②412
14010 Wilbur..... "	②348	②348	②412
14020 Almira..... "	②347	②347	②410
14035 Coulee City.. "	②346	②346	②406
14070 Spangle..... "	348	348	412
14095 Rosalia..... "	348	348	412

Route 1—Via routes provided in Section 6 in connection with WP via Bieber, Cal., except as noted.
Route 2—Via routes provided in Section 6 in connection with SP, except as noted.
▲Change; no increase or reduction.
①Rates apply via Adco, Wash., only.
a—Rates to points on NP will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP.
b—Applies via WP, Bieber, Cal., GN, Portland, Ore., NP.

NOT subject to Increases referred to in Items X-178, X-196, X-206 or X-212.

24th Revised Page.....476 Cancels 23rd Revised Page.....476

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1382
CTC.....142

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

▲Item 10360-V

Vehicles, motor, or Vehicle Parts and Other Articles, as described and subject to min. wt. and other provisions in Item 10330.
For list of articles taking Column A or B rates, see Item 10330.

FROM / TO (Except as noted)	Group 15 (San Francisco) on ATSF, SN or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond, Cal. (Via Route 2 below)	715 Los Angeles, 796 Rivera, 803 Inglewood, 823 Long Beach, Cal. (Via Route 1 below)	Group 17A (Los Angeles) (Via Route 2 below)		
	COLUMNS					
	A	A	A	B	A	B
14130 Farmington ....Wash.						
14140 Garfield... "						
14150 Palouse.... "						
14170 Pullman... "						
14200 Colton..... "						
14215 Genesee...Ida.	a348	348	.....	.....	412	412
14230 Moscow... "						
14260 Kendrick.. "						
14265 Juliaetta... "						
14300 Spokane.Wash.						
14355 Coeur d'Alene ....Ida.						
14435 Sand Point ....Ida.	a396	396	.....	.....	474	474
14565 Mullan... "	a402	402	.....	.....	477	477
14575 Wallace... "	a402	402	.....	.....	477	477
14965 Bend.....Ore.	.....	219	.....	.....	300	328
14975 Redmond.Ore.						
14980 Prineville Jct..... "	219	219	300	328	300	328
15000 Madras.... "						
15030 Maupin.... "						
15255 Gresham..Ore.	247	247	328	328	328	328

FROM / TO (Except as noted)	Group 15 (San Francisco) on ATSF, SN or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond, Cal. (Via Route 2 below)	715 Los Angeles, 796 Rivera, 803 Inglewood, 823 Long Beach, Cal. (Via Route 1 below)	Group 17A (Los Angeles) (Via Route 2 below)	
	COLUMNS				
	A	A	A	B	A	B
15660 Chiloquin.Ore.						
15680 Kirk..... "						
15715 Chemult... "	.....	219	.....	.....	300	328
15775 Oakridge.. "						
15780 Westfir.... "						
15795 Lowell....Ore.	.....	219	.....	.....	300	.....
15810 Marcola..Ore.		§③247			§328	
15814 Hyland.... "	.....	⑤③227	.....	.....	⑤308	328
15830 Ashland..Ore.	.....	③151	.....	.....	③232	③308 ⑤318
15855 Medford..Ore.	.....	③151	.....	.....	③232	③317 ⑤327
15867 White City. "						
15880 Grants Pass ....Ore.	.....	③165	.....	.....	③246	328
15905 Glendale..Ore.						
15940 Myrtle Creek... "	.....	③196	.....	.....	③277	328
15955 Roseburg.. "						
15960 Sutherlin.Ore.						
15965 Oakland... "	.....	219	.....	.....	300	328
15975 Drain..... "						

Route 1—Via routes provided in Section 6, in connection with WP via Bieber, Cal., except as noted.
Route 2—Via routes provided in Section 6, in connection with SP, except as noted.
a—Rates to points on NP will apply from 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP.
③Does not apply from Richmond, Cal. (Index 25).
⑤Does not apply from points on ATSF.
⑥Will not apply from Long Beach, Cal., on ATSF.
⑫Applies only from Long Beach, Cal., on ATSF.
㉒Expires as per Item 20.
▲Change; no increase or reduction.
§Does not apply during period of effectiveness of rates prefixed ㉒.

ISSUED JULY 29, 1960

EFFECTIVE SEPTEMBER 15, 1960

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C—2500—Authy. C-7776.

Correction 17374

NOT subject to Increases referred to in Items X-178, X-196, X-206 or X-212.

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 10365-J

Vehicles, motor, or Vehicle Parts and Other Articles, as described and subject to minimum weight and other provisions in Item 10330.

For list of articles taking Column A or B rates, see Item 10330.

FROM / (Except as Noted) / TO	Group 15 (San Francisco) on ATSF, SN or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond (Via Route 2 below)	715 Los Angeles, 796 Rivera, 805 Inglewood, 823 Long Beach (Via Route 1 below)	Group 17A (Los Angeles) (Via Route 2 below)
	COLUMNS			
	A	A	A	B	A	B
15085 Cottage Grove ....Ore.	.....	219	.....	.....	300	328
16000 Creswell... "						
16075 Mill City.Ore.	.....	⑫⑦227 ‡⑦247	.....	.....	⑫308 ‡328	328
16155 Cushman.Ore.	.....	⑦243	.....	.....	④⑫ 308 ⑦④ 324	328
16170 Reedsport. "						
16195 Coos Bay.. "						
16210 Coquille... "						
16220 Myrtle Point ....Ore.	.....	.....	.....	.....	⑫308 ‡328	328
16335 Toledo...Ore.	.....	⑫⑦227 ‡⑦247	.....	.....	⑫308 ‡328	328
16360 Dallas..... "						
16370 Falls City. "						
16425 Willamina. "						
16565 Tillamook. "						
17348 Coeur d'Alene ....Ida.	a348	348	.....	.....	412	412
17425 Sand Point ....Ida.	a396	396	.....	.....	474	474

FROM / (Except as Noted) / TO	Group 15 (San Francisco) on ATSF, SN or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond (Via Route 2 below)	715 Los Angeles, 796 Rivera, 805 Inglewood, 823 Long Beach (Via Route 1 below)	Group 17A (Los Angeles) (Via Route 2 below)
	COLUMNS			
	A	A	A	B	A	B
17475 Bonners Ferry ....Ida.	a408	408	.....	.....	489	493
17548 Vernonia..Ore.	247	⑥⑦247	⑦328	⑦328	⑥⑦ 328	⑥⑦ 328
17585 Rainier...Ore.	⑫227 ‡247	⑫227 ‡247	328	328	⑫308 ‡328	328
17595 Clatskanie. "						
17645 Seaside.... "						
17690 Camas..Wash.	219	219	300	328	300	328
17695 Washougal. "						
17725 Stevenson.. "						
17755 Bingen-White Salmon.. "						
17780 Klickitat .....Wash.	⑫227 ‡247	⑫227 ‡247	328	328	⑫308 ‡328	328
17920 Kennewick .....Wash.	202	202	328	328	328	328
17925 Pasco..... "	202	202	328	328	328	328
17970 Washtucna. "	320	320	383	383	383	383
18035 Nemours Spur..... "	348	348	412	412	412	412
18040 Spokane... "	.....	348	.....	.....	412	412

Route 1—Via Routes provided in Section 6, in connection with WP, via Bieber, Cal., except as noted.
Route 2—Via routes provided in Section 6, in connection with SP, except as noted.
a—Also applies from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., UP, Spokane, Wash., SI.
⑦Does not apply from Richmond, Cal. (Index 25).
⑥Does not apply from points on ATSF.
⑤Via ATSF, Stockton, Cal., SP, Portland (Park St.) or East Portland, Ore., SP&S.
④Via Route 2 above to Portland (Park St.) or East Portland, Ore., on SP, thence SP&S.
⑦Also applies via ATSF, Stockton, Cal., SP, Portland (Park St.) or East Portland, Ore., SP&S.
⑫Expires as per Item 20.
‡Does not apply during period of effectiveness of rates prefixed ⑫.
▲Reduction.

ISSUED MAY 5, 1960

EFFECTIVE JUNE 13, 1960

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717 Market Street, San Francisco 3, Cal.

C—2000—Authy. MK-7448.

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14th Revised Page.....477
Cancels 13th Revised Page.....477

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1352
CTC.... 142

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

★Item 10370-M

Vehicles, motor, or **Vehicle Parts** and other articles, as described and subject to minimum weight and other provisions in Item 10330.

For list of articles taking Column A or B rates, see Item 10330.

TO ☞ (RA 6326)	FROM ☞ ♣a7410 Oakland..Cal. ♣a7430 Decoto.... "	Group 15 (San Francisco) on SP. Group 16 (Port Chicago) 25 Richmond..Cal.	Group 17A (Los Angeles)	
	COLUMNS			
	A	A	A	B
18093 Fir .....Ore.				
18535 Troutdale.... "				
18570 Hood River... "				
18575 Mosier..... "				
18605 The Dalles. .. "	219	219	300	328
18665 Madras..... "				
18695 Prineville Jct.. "				
18700 Redmond..... "				
18710 Bend..... "				
18725 Wasco.....Ore.				
18740 Moro..... "				
18750 Grass Valley.. "	247	247	328	328
18753 Kent..... "				
18790 Arlington..... "				
18815 Condon..... "				
18835 Ione.....Ore.	253	253	328	328
18850 Heppner..... "	266	266	328	328
18860 Boardman.... "	262	262	328	328
18865 Umatilla..... "	262	262	328	328
18870 Hermiston.... "	262	262	328	328
18875 Stanfield..... "	278	278	339	339
18880 Echo..... "	281	281	340	340
18920 Pilot Rock...Ore.	290	290	353	353
18925 Pendleton..... "	282	282	344	344
18990 La Grande.... "	317	317	375	375
19040 Wallowa..... "	344	344	404	404
19050 Enterprise.... "	350	350	415	415
19070 Union Jct..... "	325	325	384	384
19100 Baker..... "	328	328	404	404
19135 Huntington... "	373	373	434	434
19225 Milton..... "	290	290	353	353

TO ☞	FROM ☞ ♣a7410 Oakland..Cal. ♣a7430 Decoto.... "	Group 15 (San Francisco) on SP. Group 16 (Port Chicago) 25 Richmond..Cal.	Group 17A (Los Angeles)	
	COLUMNS			
	A	A	A	B
19310 Walla Walla .....Wash.	290	290	353	353
19340 Prescott..... "	304	304	365	365
19350 Waitsburg.... "	304	304	365	365
19370 Dayton..... "	309	309	373	373
19410 Starbuck..... "	320	320	383	383
19430 Dodge..... "	329	329	392	392
19445 Pomeroy..... "	329	329	392	392
19475 Kennewick.Wash.				
19535 Grandview.... "	262	262	328	328
19555 Sunnyside..... "				
19615 Yakima..... "				
19705 La Crosse..Wash.	320	320	383	383
19725 Washtucna.... "	320	320	383	383
19760 Connell..... "	320	320	383	383
19800 Colfax.....Wash.				
19830 Pullman..... "				
19845 Moscow.....Ida.				
19860 Garfield....Wash.	348	348	412	412
19870 Farmington... "				
19885 St. John..... "				
19935 Tekoa.Wash.-Ida.				
19955 Plummer....Ida.				
20050 Kellogg-Wardner .....Ida.	402	402	477	477
20075 Wallace..... "				
20110 Fairfield...Wash.				
20120 Rockford..... "				
20160 Dishman..... "	348	348	412	412
20265 Cheney..... "				
20270 Spokane..... "				

★Change.
♣Reduction.
a—Applies via WP, Bieber, Cal., GN, Portland, Ore., UP.

ISSUED SEPTEMBER 1, 1959

EFFECTIVE OCTOBER 4, 1959

Issued by M. A. NELSON, Tariff Publishing Officer,
717 Market Street, San Francisco 3, Cal.

C—2800—Authy. MK-6565.

Correction 15994

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 16

Pacific Southcoast Freight Bureau Tariff No. 297-D (and Supplements 3 and 4), ICC. No. 1678, containing present rates on Automobiles from points in California on the Western Pacific Railroad Company to points on the Northern Pacific Railway and Union Pacific Railroad Company via Western Pacific Railroad Company to Bieber, California, Great Northern Railway to Portland, Oregon, thence Northern Pacific Railway or Union Pacific Railroad Company.

Subject, except as noted, to Increases in Rates and Charges referred to in Item X-223

SUPPLEMENT
-TO-
ICC 1678

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent

SUPPLEMENT 4

-TO-

FREIGHT TARIFF 297-D

Supplements 3 and 4 contain all changes

JOINT RATES

ON

MOTOR VEHICLES

Applicable only on Vehicles loaded on Trailers and transported on Flat Cars

FROM	TO
CALIFORNIA	IDAHO MONTANA OREGON WASHINGTON

THIS TARIFF DOES NOT APPLY ON INTRASTATE TRAFFIC

TRAILER FLAT CAR TARIFF

ISSUED FEBRUARY 8, 1961. EFFECTIVE MARCH 15, 1961.

Issued by W. O. GENTLE, Tariff Publishing Officer,
717 Market Street,
San Francisco 3, Cal.

600--2-12-9. Authy. OE-8487 Also filed with Ore.

[fol. 579]

427

RULES AND OTHER GOVERNING PROVISIONS

GENERAL RULES AND REGULATIONS

Item	SUBJECT	APPLICATION
X-223-A	Increase in Rates and Charges (CJT-1657)	Except as otherwise provided in connection with particular rates and charges, rates and charges in this Tariff, and in supplements thereto, are subject to Tariff of Increased Rates and Charges X-223, PSFB ICC 1671, supplements thereto or successive issues thereof. (See Exception) Exception.--** Line-haul rates are not subject to increases provided in Item 122, Tariff of Increased Rates and Charges X-223, PSFB ICC 1671, supplements thereto or successive issues thereof, but are subject to an increase of $1.50 per trailer. The form of this publication is permitted by authority of ICC Permission 88884, dated September 2, 1960.

**-Wording "(Does not apply in connection with GN)" eliminated♁.
♁-Reduction.

[Vol. 580]

Subject, except as noted, to Increases in Rates and Charges referred to in Item X-222

SUPPLEMENT
—TO—
I C C 1678

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent

SUPPLEMENT 3

—TO—

FREIGHT TARIFF 297-D

Cancels Supplements 1 and 2
Supplement 3 contains all changes

JOINT RATES

ON

MOTOR VEHICLES

Applicable only on Vehicles loaded on Trailers and transported on Flat Cars

FROM	TO
CALIFORNIA	IDAHO MONTANA OREGON WASHINGTON

THIS TARIFF DOES NOT APPLY ON INTRASTATE TRAFFIC

TRAILER FLAT CAR TARIFF

ISSUED JANUARY 10, 1961 EFFECTIVE FEBRUARY 16, 1961

Issued by
W. O. GENTLE, Tariff Publishing Officer
717 Market Street,
San Francisco 3, Cal.

[fol. 581]

429

Also filed with Ore.

RULES AND OTHER GOVERNING PROVISIONS

GENERAL RULES AND REGULATIONS

Item	SUBJECT	APPLICATION
3 65	Substitution of Box Car Service for Trailer on Flat Car Service	Subject to provisions of Note 1, rail carrier may substitute Multi-level or box car service in lieu of trailer on flat car service to destinations and at rates named in this tariff. Note 1.—Substitution will only be at carrier's option.
♦ 68	Substitution of Motor Service for Rail Service (JT 270)	(Applies only in connection with TS&D and only in conjunction with rates published in Section 2) Unless shipper directs otherwise, TS&D may at their option substitute rail service between Seattle and Kennewick, Pasco, Spokane and Wenatchee, Wash., and via the rail carriers shown herein for their actually available services via highways for which TS&D have lawful operation rights as common carrier.
3 70-A	Cancel; provisions of Item 65 will apply.	

SECTION 1—PROPORTIONAL RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are proportional rates which apply from points in California to points in Montana, Oregon and Washington named herein and may be used only as factors in arriving at through rates by adding to the proportional rates named in this Section the Basing rates named in Section 2.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN MONTANA	FROM POINTS ON SP IN CALIFORNIA: Melrose (Oakland), Milpitas, Oakland, San Francisco, San Jose — Column A	Column B	Column C	Route (see Section 3)	ƒLos Angeles, Raymer, South Gate (Los Angeles) — Column A	Column B	Column C	Route (see Section 3)
	Billings	$152.40	$123.70	$103.60	11, 12, 13-A, 13-B, 14	$167.50	$135.80	$113.70	11, 12, 13-A, 13-B, 14
	Butte	135.50	110.20	92.30	11, 12, 13-A, 13-B, 14, 25, 26-B	160.30	130.00	108.90	11, 12, 13-A, 13-B, 14, 26-A
	Glasgow	175.60	142.30	119.10	11, 13-B	190.70	154.30	129.20	11, 13-B
	Glendive	177.10	143.50	120.10	12, 13-A, 14	192.20	155.60	130.20	12, 13-A, 14
▲425-B	Great Falls	145.20	118.00	98.90	11, 13-B	160.30	130.00	108.90	11, 13-B
	Kalispell	143.80	116.80	97.90	11, 13-B	187.00	151.40	126.70	11, 13-B
	Laurel	152.40	123.70	103.60	11, 12, 13-A, 13-B, 14	167.50	135.80	113.70	11, 12, 13-A, 13-B, 14
	Livingston	139.80	113.60	95.20	12, 13-A, 14	160.30	130.00	108.90	12, 13-A, 14
	Miles City	168.70	136.70	114.50	12, 13-A, 14	183.60	148.70	124.50	12, 13-A, 14
	Missoula	135.50	110.20	92.30	12, 13-A, 14	160.30	130.00	108.90	12, 13-A, 14
	Sidney	183.20	148.30	124.20	11, 12, 13-A, 13-B, 14	198.40	160.50	134.30	11, 12, 13-A, 13-B, 14

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN MONTANA	FROM POINTS ON WP IN CALIFORNIA: Decoto, Melrose (Oakland), Milpitas, Oakland, San Francisco, San Jose — Column A	Column B	Column C	Route (see Section 3)
	Billings	$152.40	$123.70	$103.60	24
	Butte	135.50	110.20	92.30	24, 26
	Glasgow	175.60	142.30	119.10	24
▲450-B	Great Falls	145.20	118.00	98.90	24
	Kalispell	143.80	116.80	97.90	24
	Laurel	152.40	123.70	103.60	24
	Sidney	183.20	148.30	124.20	24

ƒApplies only in connection with Routes 12, 13-A, 14, 25, 26-A or 26-B.

For explanation of other reference marks, see concluding page(s) of this Supplement.

SECTION 1—PROPORTIONAL RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are proportional rates which apply from points in California to points in Montana, Oregon and Washington named herein and may be used only as factors in arriving at through rates by adding to the proportional rates named in this Section the Basing rates named in Section 2.

Vehicles, as described in and subject to the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON (except as noted) (JT-9770)	FROM POINTS ON SP IN CALIFORNIA: Melrose (Oakland), Milpitas, Oakland, San Francisco, San Jose			δLos Angeles, Raymer, South Gate (Los Angeles)			Route (see Section 3)
		Column A	Column B	Column C	Column A	Column B	Column C	
500-B	Bend, Ore.	$73.00	$59.90	$52.50	$109.00	$88.70	$76.50	26-C, (Fe)26-D, 26-E
	‡Kennewick	90.00	73.20	62.30	126.00	102.00	86.30	5, 6, 7, 8, 9 or 10
	‡Pasco	90.00	73.20	62.30	126.00	102.00	86.30	
	Renton	78.50	(2)64.00 (3)71.50	54.70	116.50	(3)94.40 (5)105.70	80.00	1, 2, 3, 4
	δSeattle	78.50	(2)64.00 (3)71.50	54.70	116.50	(3)94.40 (5)105.70	80.00	16-A, 16-B, 16-C
	‡Spokane	116.00	94.00	79.70	154.00	124.40	105.00	11, 12, 13, 14, 15
	Vancouver	76.00	62.90	55.50	112.00	91.70	79.50	26-G, 26-H, 26-I, 26-J
	‡Wenatchee	100.00	81.20	69.00	136.00	110.00	93.00	16

Vehicles, as described in and subject to the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON (except as noted) (JT-9770)	FROM POINTS ON WP IN CALIFORNIA: Decoto, Melrose (Oakland), Milpitas, Oakland, San Francisco, San Jose			Route (See Section 3)
		Column A	Column B	Column C	
550-B	Bend, Ore.	$73.00	$59.90	$52.50	26F
	‡Kennewick	90.00	73.20	62.30	(1)18 or (1)20
	‡Pasco	90.00	73.20	62.30	(1)18, 19
	Renton	78.50	(2)64.00 (3)71.50	54.70	(1)18, 21, (1)22 or (1)23
	δSeattle	78.50	(2)64.00 (3)71.50	54.70	24-A, (1)24-B, (1)24-C
	‡Spokane	116.00	94.00	79.70	(1)18, (1)20 or 24
	Vancouver	76.00	62.90	55.50	26-K
	‡Wenatchee	100.00	81.20	69.00	24

δApplies only in connection with Routes 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 26-D, 26-E, 26-H, 26-I or 26-J.

(Fe)Applies to points named only.

For explanation of other reference marks, see concluding page(s) of this Supplement.

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON on TS&D (JT-9770)	FROM Renton, Wash.					Route (see Section 3)
		Column A	Column B	Column C	Column D	Column E	
	Aberdeen	$37.20	$29.76	$24.80	$74.40	$49.60	
	Almira	**	**			**	
1000-B	Anacortes	33.38	26.70	22.25	66.76	44.50	
	Arlington	29.25	23.40	19.50	58.50	39.00	
	Auburn	17.95	14.36	11.96	35.90	23.93	
	Bellevue	17.95	14.36	11.96	35.90	23.93	
	Bellingham	37.98	30.98	25.32	75.96	50.64	
	Bothell	18.87	15.09	12.58	37.74	25.16	
	Bremerton	28.10	22.48	18.73	56.20	37.47	
	Brewster	**	**			**	
	Camas	57.50	46.00			76.67	
	Cashmere	**	**			**	
	Castle Rock	42.00	33.60			56.00	
1010-B	Centralia	32.00	25.60			42.67	
	Chehalis	34.31	27.45			45.75	
	Chelan	**	**			**	
	Cheney	**	**			**	
	Chewelah	**	**			**	
	Cle Elum	27.25	21.80	18.17	54.50	36.33	
	Colfax	**	**			**	
	Colville	**	**			**	
	Coulee City	**	**			**	
	Coupeville	40.50	32.40	27.00	81.00	54.00	
	Davenport	**	**			**	
	Dayton	**	**			**	
	Deer Park	**	**			**	
	Dishman	**	**			**	27
	Douglas	**	**			**	
1020-B	East Stanwood	28.67	22.94	19.11	57.34	38.23	
	Eatonville	25.81	20.65	17.21	51.62	34.41	
	Edmonds	21.77	17.41	14.51	43.54	29.03	
	Ellensburg	38.75	31.00	25.83	77.50	51.67	
	Elma	31.68	25.34	21.12	63.36	42.24	
	Enumclaw	20.43	16.34	13.62	40.86	27.24	
	Ephrata	**	**			**	
	Everett	23.50	18.80	15.66	47.00	31.33	
	Ferndale	39.50	31.60	26.33	79.00	52.67	
	Friday Harbor	46.42	37.14	23.54	70.62	47.08	
	Gig Harbor	26.61	21.29	17.74	53.22	35.48	
1030-B	Goldendale	84.50	67.60			112.66	
	Grand Coulee	**	**			**	
	Grand View	**	**			**	
	Hoquiam	38.50	30.80	25.66	77.00	51.33	
	Issaquah	17.95	14.36	11.96	35.90	23.93	
	Kalama	45.50	36.40			60.67	
	Kelso	43.75	35.00			58.33	
	Kennewick	**	**			**	
	Kent	17.95	14.36	11.96	35.90	23.93	
	Kirkland	17.95	14.36	11.96	35.90	23.93	
	Klickitat	70.50	56.40			94.00	
1040-A	Leavenworth	**	**			**	
	Lind	**	**			**	
	Longview	44.50	35.60			59.33	
	Lynden	41.00	32.80	27.33	82.00	54.67	
	Marysville	24.94	19.95	16.63	49.88	33.25	
	Metaline Falls	**	**			**	
	Monroe	22.64	18.11	15.09	45.28	30.19	

****Rates eliminated; ‡‡rates otherwise provided from Seattle, Wash., will apply.**

For explanation of other reference marks, see concluding page(s) of this Supplement.

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON on TS&D (JT-9770)	FROM Renton, Wash.					Route (see Section 3)
		Column A	Column B	Column C	Column D	Column E	
	Montesano	$34.31	$27.45	$22.88	$68.62	$45.75	
	Morton	32.47	25.98	21.94	64.94	47.15	
	Mt. Vernon	31.16	24.93	20.78	62.32	41.55	
	Moses Lake	**	**			**	
1050-B	Naches	**	**	33.66	**	**	
	Newport	**	**			**	
	North Bend	21.06	16.85	14.04	42.12	28.08	
	Oak Harbor	38.00	30.40	25.50	76.00	51.00	
	Odessa	**	**			**	
	Okanogan	**	**			**	
	Olympia	25.80	20.64	17.20	51.60	34.40	
	Omak	**	**			**	
	Oroville	**	**			**	
	Othello	**	**			**	
	Palouse	**	**			**	
1060-A	Pasco	**	**			**	
	Pomeroy	**	**			**	
	Port Angeles	27.46	21.97	18.30	54.92	36.61	
	Port Orchard	27.98	22.38	18.65	55.96	37.31	
	Port Townsend	25.46	20.37	16.97	50.92	33.95	
	Poulsbo	33.33	26.66	22.22	66.66	44.44	
	Prosser	**	**			**	
	Pullman	**	**			**	
	Puyallup	18.25	14.60	12.17	36.50	24.33	
	Quincy	**	**			**	
	Raymond	42.25	33.80	28.16	84.50	56.33	
	Renton	14.50	11.60	9.66	29.00	19.33	
	Republic	**	**			**	27
	Richland	**	**			**	
1070-B	Ridgefield	51.60	41.90			68.66	
	Ritzville	**	**			**	
	Rockford	**	**			**	
	Rosalia	**	**			**	
	Seattle	14.50	11.60	9.66	29.00	19.33	
	Sedro Wooley	34.05	27.24	16.03	48.10	32.07	
	Shelton	30.11	24.09	20.08	60.22	40.15	
	Snohomish	21.06	16.84	14.04	42.12	28.08	
	Snoqualmie	20.75	16.60	13.95	41.50	28.66	
	Spokane	**	**			**	
	Sprague	**	**			**	
1080-B	Stevenson	67.00	53.60			89.33	
	Sumner	18.56	14.85	12.37	37.12	24.75	
	Sunnyside	**	**			**	
	Tacoma	18.61	14.89	12.41	37.22	24.81	
	Tonasket	**	**			**	
	Toppenish	**	**			**	
	Twisp	**	**			**	
	Vancouver	53.25	42.60			71.00	
	Walla Walla	**	**			**	
	Wapato	**	**			**	
	Washtucna	**	**			**	
	Waterville	**	**			**	
	Wenatchee	**	**			**	
1090-A	Wenlock	38.00	30.40			50.67	
	White Salmon	65.00	52.00			86.67	
	Winslow	38.33	30.66	25.55	76.66	51.11	
	Woodlawn	48.00	38.40			64.00	
	Woshongel	58.25	46.60			77.67	
	Yakima	**	**			**	

**Rates eliminated; ‡‡rates otherwise provided from Seattle, Wash., will apply.
For explanation of other reference marks, see concluding page(s) of this Supplement.

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, D or E rates.

Item	TO POINTS IN WASHINGTON ON TS&D (JT-9770)	FROM △Seattle, Wash. Column A	Column B	Column D	Column E	ROUTE (See Section 3)
	Almira	‡‡69.97	$48.48	$139.44	‡‡93.29	
	Brewster	53.05	34.94	106.10	70.73	
	Cashmere	39.45	24.06	78.90	52.60	
	Chelan	45.86	29.19	91.72	61.15	
	Cheney	55.45	36.86	110.90	73.93	
‡‡	Chewelah	65.60	44.98	131.20	87.47	
1092	Colfax	56.50	37.70	113.00	75.33	
	Colville	69.97	48.48	139.94	93.29	
	Coulee City	52.14	34.21	104.28	69.52	
	Davenport	60.14	40.61	120.28	80.19	
	Dayton	40.04	28.53	80.08	53.39	
	Deer Park	56.69	37.85	113.38	75.59	
	Dishman	49.50	32.10	99.00	66.00	
	Douglass	42.88	26.80	85.76	57.17	
	Ephrata	47.59	30.57	95.18	63.45	
	Fairfield	59.85	40.38	119.70	79.80	
	Grand Coulee	58.75	39.50	117.50	78.33	
‡	Grandview	35.86	21.18	71.72	47.81	
1094	Grange	40.83	25.15	81.66	54.44	
	Ione	71.55	49.74	143.10	95.40	
	Kennewick	23.50	11.30	47.00	31.33	
	Leavenworth	41.31	25.55	82.62	55.08	
	Lind	40.30	24.74	80.60	53.73	
	Metaline Falls	74.44	50.47	148.88	99.25	27
	Moses Lake	49.50	32.20	99.00	66.00	
	Naches	‡53.58	35.20	‡106.76	‡71.17	
	Newport	63.01	42.91	126.02	84.01	
	Odessa	42.66	26.63	85.32	56.88	
	Okanogan	57.91	38.83	115.82	77.21	
‡‡	Omak	58.96	39.67	117.92	78.61	
1096	Oroville	68.25	47.10	136.50	91.00	
	Othello	39.51	24.11	79.02	52.68	
	Palouse	67.50	46.50	135.00	90.00	
	Pasco	23.50	11.30	47.00	31.33	
	Pomeroy	48.70	31.46	97.40	64.94	
	Prosser	33.56	19.35	67.12	44.75	
	Pullman	63.75	43.50	127.50	85.00	
	Quincy	42.70	26.66	85.40	56.93	
	Republic	83.25	59.10	166.50	111.00	
	Richland	29.45	16.06	58.90	39.27	
	Ritzville	44.76	28.31	89.52	59.68	
‡	Rockford	56.69	37.85	113.38	75.59	
1098	Rosalia	58.41	39.23	116.82	77.88	
	Spokane	49.50	32.10	99.00	66.00	
	Sprague	61.86	41.99	123.72	82.48	
	Sunnyside	37.87	22.79	75.74	50.49	
	Tekoa	62.72	42.68	125.44	83.63	
	Tonasket	64.00	43.70	128.00	85.33	
	Toppenish	42.66	26.63	85.32	56.88	
	Twisp	57.65	34.62	115.30	76.87	
	Walla Walla	37.30	22.34	74.60	49.73	
	Wapato	43.71	27.47	87.42	58.28	
‡	Washtucna	40.82	25.16	81.64	54.43	
1099	Waterville	41.94	26.05	83.88	55.92	
	Wenatchee	33.50	19.30	67.00	44.67	
	Wilbur	58.56	39.35	117.12	78.08	
	Yakima	45.55	28.94	91.10	60.73	

‡‡Reduction, except as noted.

△Rates apply only in connection with shipments accorded substitute service under provisions of Item 68.

For explanation of other reference marks, see concluding page(s) of this Supplement.

Item	ROUTE	EXPLANATION OF ROUTE NUMBERS (Subject to Item 1500) ROUTING IN CONNECTION WITH PROPORTIONAL RATES IN SECTION 1
		To Renton, Wash.:
	1	SP, Portland, Ore., GN, Seattle or Black River, Wash., PC.
	2	SP, Portland, Ore., NP, Seattle or Black River, Wash., PC.
	3	SP, Portland, Ore., NP.
	4	SP, Portland, Ore., UP, Seattle or Black River, Wash., PC.
		To Kennewick, Wash.:
	5	SP, Portland, Ore., NP.
	6	SP, Portland, Ore., SP&S.
	7	SP, Portland, Ore., SP&S, Pasco, Wash., NP.
	8	SP, Portland, Ore., UP.
1510-A		To Pasco, Wash.:
	9	SP, Portland, Ore., NP.
	10	SP, Portland, Ore., SP&S.
		To Billings, Butte, Glasgow, Glendive, Great Falls, Kalispell, Laurel, Livingston, Miles City, Missoula, or Sidney, Montana, Spokane, Wash.:
	11	SP, Portland, Ore., GN.
	12	SP, Portland, Ore., NP.
	13	SP, Portland, Ore., SP&S.
	13-A	SP, Portland, Ore., SP&S, Spokane, Wash., NP.
	13-B	SP, Portland, Ore., SP&S, Spokane, Wash. GN.
	14	SP, Portland, Ore., SP&S, Pasco, Wash., NP.
		To Spokane, Wash.:
	15	SP, Portland, Ore., UP.
		To Wenatchee, Wash.:
	16	SP, Portland, Ore., GN.
		To Seattle, Wash.:
	♦16-A	SP, Portland, Ore., GN.
	♦16-B	SP, Portland, Ore., NP.
	♦16-C	SP, Portland, Ore., UP.
		(JT-9770)
		To Kennewick, Pasco, Renton or Spokane, Wash.
	18	WP, Bieber, Cal., GN, Portland, Ore., NP.
		To Pasco, Wash.
	19	WP, Bieber, Cal., GN, Bend, Ore., OT, Wishram, Wash., SP&S.
		To Kennewick or Spokane, Wash.
	20	WP, Bieber, Cal., GN, Portland, Ore., UP.
		To Renton, Wash.
	21	WP, Bieber, Cal., GN, Seattle or Black River, Wash., PC.
		To Renton, Wash.
1520-A	22	WP, Bieber, Cal., GN, Portland, Ore., NP, Seattle or Black River, Wash., PC.
		To Renton, Wash.
	23	WP, Bieber, Cal., GN, Portland, Ore., UP, Seattle or Black River, Wash., PC.
		To Billings, Butte, Glasgow, Great Falls, Kalispell, Laurel or Sidney, Montana, Spokane or Wenatchee, Wash.
	24	WP, Bieber, Cal., GN.
		To Seattle, Wash.:
	♦24-A	WP, Bieber, Cal., GN.
	♦24-B	WP, Bieber, Cal., GN, Portland, Ore., NP.
	♦24-C	WP, Bieber, Cal., GN, Portland, Ore., UP.

For explanation of other reference marks, see below.

EXPLANATION OF REFERENCE MARKS

Reference Marks		EXPLANATION
♦	B	Reduction.
♦	B	Increase.
▲	A	Change in wording which results in neither increases nor reductions in charges.
‡	B	In connection with shipments moving beyond, via Route 27, rates apply only on Automobiles, passenger, set-up.
①	B	Applies only from Decoto or Melrose (Oakland), Cal.
②	B	Maximum weight of each vehicle not to exceed 2,600 lbs.
③	B	Rate does not apply on shipments covered by rate prefixed ②.
□(with number enclosed)	A	Reissued from supplement bearing number enclosed within the square. See Item 100.

A—Addition.
B—Brought forward without change.

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I C C 1678
Cancels
I C C 1670

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent

FREIGHT TARIFF 297-D

Cancels Freight Tariff 297-C

JOINT RATES

ON

MOTOR VEHICLES

Applicable only on Vehicles loaded on Trailers and transported on Flat Cars

FROM	TO
CALIFORNIA	IDAHO MONTANA OREGON WASHINGTON

THIS TARIFF DOES NOT APPLY ON INTRASTATE TRAFFIC

TRAILER FLAT CAR TARIFF

ISSUED NOVEMBER 30, 1960 EFFECTIVE JANUARY 5, 1961

Issued by M. A. NELSON, Tariff Publishing Officer,
717 Market Street,
San Francisco 3, Cal.

Also filed with Ore.

[fol. 585]

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PARTICIPATING CARRIERS

Carrier Abbreviations	NAME OF CARRIER
CamP	Camas Prairie Railroad Company.
GN	Great Northern Railway Company.
NP	Northern Pacific Railway Company.
OT	Oregon Trunk Railway.
PC	Pacific Coast Railroad Company.
SP	Southern Pacific Company (See Southern Pacific Lines).
SP	Southern Pacific Lines: Southern Pacific Company (Pacific Lines) (French, N. M., and west, Ogden, Utah, and west, Portland, Ore., and south)
SI	Spokane International Railroad Company.
SP&S	Spokane, Portland and Seattle Railway Co.
TS&D	Transport Storage & Distributing Co.
UP	Union Pacific Railroad Company.
WWV	Walla Walla Valley Railway Company.
WP	Western Pacific Railroad Company (The).

INDEX OF COMMODITIES

COMMODITY	Item	COMMODITY	Item
Vehicles, motor, viz.: Automobiles, freight, set up, Automobiles, passenger, set up.	400 to 1430		

ALPHABETICAL LIST OF STATIONS FROM WHICH RATES APPLY

CALIFORNIA

Decoto on WP
Los Angeles on SP
Melrose (Oakland) on SP, WP
Milpitas on SP, WP
Oakland on SP, WP
Raymer on SP
San Francisco on SP, WP
San Jose on SP, WP
South Gate (Los Angeles) on SP

ALPHABETICAL LIST OF STATIONS TO WHICH RATES APPLY

IDAHO

Bonners Ferry
Coeur d'Alene
Craigmont
Grangeville
Kellogg
Lewiston
Moscow
Orofino
Potlatch
St. Maries
Sandpoint
Wallace

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ALPHABETICAL LIST OF STATIONS FROM OR TO WHICH RATES APPLY

MONTANA

Big Timber	Conrad	Hamilton	Missoula	Sweet Grass
Billings	Cut Bank	Havre	Philipsburg	Terry
Boulder	Deer Lodge	Helena	Plentywood	Thompson Falls
Bozeman	East Glacier Park	Hysham	Polson	Three Forks
Browning	Eureka	Kalispell	Poplar	Townsend
Butte	Fort Benton	Laurel	Red Lodge	West Glacier
Chester	Forsyth	Lewistown	Scobey	White Fish
Chinook	Gardiner	Libby	Shelby	Wibaux
Choteau	Glasgow	Livingston	Sidney	Wolf Point
Circle	Glendive	Malta	Stanford	
Columbus	Great Falls	Miles City	Superior	

OREGON

Arlington	Condon	Madras	Pilot Rock	St. Helens
Astoria	Heppner	Milton-Freewater	Rainier	The Dalles
Bend	Hermiston	Mono	Redmond	Vernonia
Clatskanie	Hood River	Pendleton	Seaside	

WASHINGTON

Aberdeen	Deer Park	Kent	Pomeroy	Sunnyside
Almira	Dishman	Kirkland	Port Angeles	Tacoma
Anacortes	Douglas	Klickitat	Port Orchard	Tekoa
Arlington	East Stanwood	Leavenworth	Port Townsend	Tonasket
Auburn	Eatonville	Lind	Poulsbo	Toppenish
Bellevue	Edmonds	Longview	Prosser	Twisp
Bellingham	Ellensburg	Lynden	Pullman	Vancouver
Bingen-White Salmon	Elma	Marysville	Puyallup	Walla Walla
Bothell	Enumclaw	Metaline Falls	Quincy	Wapato
Bremerton	Ephrata	Monroe	Raymond	Washtucna
Brewster	Everett	Montesano	Renton	Waterville
Camas	Fairfield	Morton	Republic	Wenatchee
Cashmere	Ferndale	Moses Lake	Richland	Wenlock
Castle Rock	Friday Harbor	Mt. Vernon	Ridgefield	White Salmon
Centralia	Gig Harbor	Naches	Ritzville	Wilbur
Chehalis	Goldendale	Newport	Rockford	Winlock
Chelan	Grand Coulee	North Bend	Rosalia	Winslow
Cheney	Grandview	Oak Harbor	Seattle	Woodland
Chewelah	Grange	Odessa	Sedro Woolley	Woodlawn
Cle Elum	Hoquiam	Okanogan	Shelton	Woshongel
Colfax	Ione	Olympia	Snohomish	Yakima
Colville	Issaquah	Omak	Snoqualmie	
Coulee City	Kalama	Oroville	Spokane	
Coupeville	Kelso	Othello	Sprague	
Davenport	Kennewick	Pasco	Stevenson	
Dayton		Palouse	Sumner	

RULES AND OTHER GOVERNING PROVISIONS

GENERAL RULES AND REGULATIONS

Item	SUBJECT	APPLICATION
X-223	Increase in Rates and Charges (JT-9620)	Except as otherwise provided in connection with particular rates and charges, rates and charges in this Tariff, and in supplements thereto, are subject to Tariff of Increased Rates and Charges X-223, PSFB ICC 1671, supplements thereto or successive issues thereof. (See Exception) Exception.—(Does not apply in connection with GN). Line-haul rates are not subject to increases provided in Item 122 Tariff of Increased Rates and Charges X-223, PSFB ICC 1671, supplements thereto or successive issues thereof, but are subject to an increase of $1.50 per trailer. The form of this publication is permitted by authority of ICC Permission 88884, dated September 2, 1960.

For explanation of other reference marks, see concluding page(s) of this Tariff.

RULES AND OTHER GOVERNING PROVISIONS

GENERAL RULES AND REGULATIONS

Item	SUBJECT	APPLICATION
20	Reference to Tariffs, Items, Notes, Rules, Etc.	Where reference is made in this Tariff to tariffs, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such Tariffs and reissues of such items, notes, rules, etc.
35	Transfer Between Connecting Carriers	The joint rates published herein include all charges for switching, drayage or other transfer services at intermediate interchange points on shipments handled through and not stopped for special services at such intermediate interchange points.
40	Consecutive Numbers	Where consecutive numbers are represented in this Tariff by the first and last numbers connected by word "to" or a hyphen, they will be understood to include both of the numbers shown. If the first number only bears a reference mark, such reference mark also applies to the last number shown and to all numbers between the first and the last number.
55	Substitution of Motor Service for Rail Service	(Applies only in connection with NP, OT, SP&S or UP and only in conjunction with rates published in Section 2.) Shipments handled under this Tariff are subject to the provisions of Western Trunk Line Tariff 457-B, ICC A-4341. Western Trunk Line Committee Agent PSFB Agent ICC 1668 supplements thereto or successive issues thereof, and where substitute service as authorized therein is performed, rates named herein will apply.
60	Substitution of Motor Service for Rail Service	a–(Applies only in connection with GN and only in conjunction with rates published in Section 2.) Motor Vehicles transported under the rates provided herein to destinations on GN in Idaho and Washington named in Section 2 of this tariff may at the option of the GN be delivered in substituted Motor Vehicle Service of the Transport Storage & Distributing Co. (MC-108121) from the ramp of the PCRR Co., in Renton, Wash., in lieu of rail service from and to points in Section 2 hereof. b–(Applies only in connection with NP and only in conjunction with rates published in Section 2.) Motor Vehicles transported under the rates provided herein to destinations on NP in Washington named in Section 2 of this tariff may at the option of the NP be delivered in substituted Motor Vehicle Service of the Transport Storage & Distributing Co. (MC-108121) from the ramp of the PCRR Co. in Renton, Wash., in lieu of rail service from and to points in Section 2 hereof. c–(Applies only in connection with UP or CamP and only in conjunction with rates published in Section 2.) Motor Vehicles transported under the rates provided herein to destinations on UP or CamP in Idaho, Oregon and Washington named in Section 2 of this tariff may at the option of the UP or CamP be delivered in substituted Motor Vehicle Service of the Transport Storage & Distributing Co. (MC-108121) from the ramp of the PCRR Co. in Renton, Wash., in lieu of rail service from and to points in Section 2 hereof.
70	Substitution of Box Car Service for Trailer-on-Flat Car Service	(Applies only in connection with CamP, GN, NP, OT, SP&S, UP or WWV) Carriers can at their option substitute box car service in lieu of trailer on flat car service to destinations and at rates named in Section 2 of this Tariff.
75	Method of Cancelling Items	As this tariff is supplemented, numbered items with letter suffixes cancel correspondingly numbered items in the original tariff or in a prior supplement. Letter suffixes will be used in alphabetical sequence starting with A. Example: Item 445-A cancels 445, and Item 365-B cancels Item 365-A in a prior supplement, which, in turn, cancelled Item 365.
100	Method of Denoting Reissued Matter In Supplements	Matter brought forward without change from one supplement to another will be designated as "Reissued" by a reference mark in the form of a square enclosing a number, the number being that of the supplement in which the reissued matter first appeared in its currently effective form. To determine its original effective date consult the supplement in which the reissued matter first became effective.

RULES AND OTHER GOVERNING PROVISIONS

SPECIAL RULES AND REGULATIONS UNLIMITED

Item	SUBJECT	APPLICATION
200	Application of Rates	Rates published herein apply only on motor vehicles described in Item 400 loaded on trailers supplied and transported by carriers from consignor's facilities within pickup limits (See Note) at origin to consignee's facilities within delivery limits (See Note) at destination. The rates and charges published herein include a pickup service of vehicles and loading on trailers within the pickup limits (See Note) at origins and unloading of trailers and delivery of vehicles within delivery limits (See Note) at destination, except as provided in individual items in Section 2. Note.—Except as provided in Item 205, pickup and delivery limits referred to above are as described in NPCFB Tariff 95-M, ICC 1004 and in PSFB Tariff 247-J, ICC 1602, except that where areas are not defined in NPCFB Tariff 95-M nor PSFB Tariff 247-J, delivery limits are defined as city limits or if city limits are not defined, delivery limits will be that area within one mile radius of the post office.
205	Pickup or Delivery Limits (Exception to Note in Item 200	Los Angeles, Cal.—An area beginning at Sepulveda Blvd. and Roscoe Blvd., south on Sepulveda Blvd. to Wilshire Blvd., east on Wilshire Blvd. to Vermont Ave., south on Vermont Ave. to Imperial Highway, east on Imperial Highway to Los Angeles River, north along Los Angeles River to Pasadena Freeway, northeasterly along Pasadena Freeway to San Fernando Road, northwesterly along San Fernando Road to Tuxford Street, southwesterly on Tuxford Street to Roscoe Blvd., thence west on Roscoe Blvd. back to beginning. Includes substations of Raymer and South Gate, Calif. San Jose—City Limits, also territory north thereof within boundary of Eastshore Freeway on the west; Alviso-Milpitas Road (State Highway 9) and Calaveras Road on the north; West Dempsey Road to Landess Avenue, west on Landess Avenue to Capitol Avenue and on Capitol Avenue to Berryessa Road on the east; southwesterly on Berryessa Road to San Jose City limits.
210	Additional Services	If any additional services not otherwise provided for herein are performed by any carrier party hereto at shipper's request, the actual cost for such labor and material in such cases plus ten percent shall be the charge for such service.
220	Protection of Cooling System	During the season when cooling system of vehicles transported requires protection from freezing, such protection will be furnished by and at the risk of the shipper.
230	Carrier's Liability	Except as otherwise provided, carrier will not be liable for damages caused by leaking brake fluids, lubricants, battery acids and/or cooling system anti-freeze solution and gasoline or by freezing of radiator.
240	Condition of Motor Vehicles	Carrier will not accept for transportation any vehicle which cannot, due to size or special construction, be safely handled by the carrier in full compliance with all state laws and regulations of the Interstate Commerce Commission.
250	Definition of Terms	(a) The term "Pick-up," as used in this tariff, refers to the service of origin carrier in calling for vehicles and receipting therefor at shipper's place of business or other point of origin designated by shipper. (b) The term "Delivery Service," as used in this tariff refers to the service of carrier at destination for the unloading and delivery of vehicles at consignee's dock, platform, doorway, or other facility readily and conveniently accessible to trailer, or such other point designated by the consignee or consignor. (c) The term "Vehicle" or "Vehicles," as used in this tariff means automobiles described in Item 400. (d) The term "Trailer" as used in this tariff means highway equipment in which automobiles are loaded when handled over the highway.
260	Diversion or Reconsignment	(a) No charge will be made for a diversion or reconsignment if order for such diversion or reconsignment is received by carrier at point of origin in time to permit it to be accomplished before shipment leaves carrier's terminal at point of origin. (b) When a shipment is stopped at request of shipper short of its original destination, the charges from point of origin to point stopped will apply plus $2.00 per vehicle stopped short. (c) When shipments are reconsigned in transit or after arrival at billed destination to a point beyond the point of diversion, but before delivery to consignee, the rate to apply will be that to the final destination plus a charge of $2.00 per vehicle. (d) When shipper orders a shipment returned to point of origin before delivery to original consignee, same rate will apply for the return movement from point at which shipment is diverted as applies from origin to point at which shipment is stopped. (e) All orders for diversion or reconsignment must be given or confirmed in writing by shipper.
280	C.O.D. Shipments	C.O.D. shipments will be handled when required, on a straight bill of lading with the amount of the collection to be made indicated in bold figures and in plain sight of the body of the bill of lading, at a charge of $1.25 for each vehicle, provided driver is not required to wait more than one hour after vehicles are tendered for delivery. Thereafter, for each hour, or fraction thereof, of waiting time, there shall be a charge of $2.50, the total charge so produced not to exceed $20.00 for any 24-hour period. Delivery to consignee shall be made upon payment of all charges in cash or certified check, except when authorized by shipper, in writing, uncertified checks will be accepted, made payable to the consignor and the carrier will assume no further liability. Carrier shall remit each C.O.D. collection directly to the consignor or other person designated by the consignor as payee promptly and within 10 days after delivery of the C.O.D. shipment to the consignee.
290	Gas, Oil and Grease	The consignor or shipper shall on all shipments at his own expense have vehicles in running condition, filled with the proper amounts of grease, oil and have a minimum of one gallon of gasoline in each vehicle at point of origin.

RULES AND OTHER GOVERNING PROVISIONS

SPECIAL RULES AND REGULATIONS UNLIMITED

Item	SUBJECT	APPLICATION
300	Legal Holidays	Legal Holidays, as referred to in this tariff are (See Note): New Year's Day — Labor Day Washington's Birthday — Thanksgiving Day Memorial Day — Christmas Independence Day Note.—When a legal holiday falls on Sunday, the following Monday will be treated the same as one of the foregoing holidays.
305	Less Than Trailer-Loads	When shipments of less than four vehicles are tendered as a trailer-load, charges will be assessed as follows: (a) Three vehicles per trailer: One and one-third (1⅓) times the Column "A" rate to destination where each vehicle is unloaded and delivered. (b) Two vehicles per trailer: Two times the Column "A" rate to destination where each vehicle is unloaded and delivered.
310	Partial Unloading	(a) Shipments of four or more vehicles per trailer may be stopped in transit for partial unloading, subject to a charge of $2.00 per each vehicle in the load. (b) Rate for each vehicle will be the rate from origin to destination where unloaded and delivered except that if any vehicles are moved over the highway resulting in a direct back-haul or moved in excess of 50 miles from point at which first vehicle is unloaded (see Note), rate for all four or more vehicles will be assessed at the rate applicable to highest rated destination plus stop-off charge. (see exception) Note.—Mileage referred to above is published in Agent Earp's Washington Highway Freight Tariff Bureau, Mileage Guide 14, MF-ICC-10. Exception.—The provisions of this paragraph will not apply to mixed trailer-loads of vehicles containing vehicles destined to Port Angeles or Port Townsend when the remaining vehicles loaded on the trailer are destined for Seattle.
320	Protection of Batteries	Carriers will not be liable for damage caused by freezing of batteries.
330	Refused Shipments	(a) On shipments refused by consignee or undelivered for any reason beyond control of the delivering carrier, shipper shall be immediately notified at point of origin of carrier's inability to deliver such shipments. If consignee refuses to accept shipment for storage, then delivering carrier at its option may either: (1) Hold such shipment in its possession subject to storage charge of $2.00 per vehicle per day or fraction thereof when held beyond a period of 48 hours computed from the first 7 a.m. (Sundays and legal holidays excepted) after consignee refused to accept shipment for storage, or (2) Place such shipment in safe storage at destination or within a reasonable distance therefrom (in bonded warehouse if possible). (b) When delivering carrier places such shipment in storage with the original consignee or at any other place as permitted in paragraph (a)-(2) above, it shall secure proper storage receipt in shipper's name and such storage charges as may accrue will be borne by the shipper. (c) A charge of $2.00 per vehicle will be assessed for each vehicle placed in storage under the provisions of paragraph (a) above.
340	Split Delivery	Shipments of four or more vehicles per trailer may be unloaded and delivered at different locations at one destination subject to a charge of $2.00 per vehicle delivered at the split delivery point.
350	Storage Charges Origin	For vehicles held in originating carrier's terminal at point of origin at shipper's request, or for completion of a trailer load shipment beyond a period of 48 hours, figured from the first 7 a.m. following hour of receipt of first vehicle by originating carrier (Sunday and legal holidays excluded), originating carrier will charge shipper a storage charge of 25 cents per vehicle per day or fraction thereof figured from the first 7 a.m. following the expiration of the first 48-hour period provided herein.
360	Terminal Handling Charge Origin	Vehicles delivered to origin carrier and returned to shipper at shipper's request before leaving origin carrier's terminal at point of origin shall be subject to a handling charge of $1.00 per vehicle.

Item	COMMODITY DESCRIPTION
400	Column A Rates Apply on: (See Note) Vehicles, motor, viz.: Automobiles, freight, set up, Automobiles, passenger, set up. Minimum: Four motor vehicles per trailer. Straight or mixed trailer-loads. Column B Rates Apply on: (See Note) Vehicles, motor, viz.: Automobiles, freight, set up. Automobiles, passenger, set up. Minimum: Five motor vehicles per trailer. Straight or mixed trailer-loads. Column C Rates Apply on: (See Note) Vehicles, motor, viz.: Automobiles, passenger, set up, maximum weight of each vehicle not to exceed 2,600 lbs. Minimum: Six motor vehicles per trailer. Column D Rates Apply on: (See Note) Vehicles, motor, viz.: Automobiles, freight, set up, Automobiles, passenger, set up. Minimum: Two motor vehicles per trailer. Column E Rates Apply on: (See Note) Vehicles, motor, viz.: Automobiles, freight, set up, Automobiles, passenger, set up. Minimum: Three motor vehicles per trailer. Straight or mixed trailer-loads. Note.—Will also apply on vehicles protected by plastic covers furnished by shippers and plastic covers will be returned to shippers. (For rates, see Sections 1 and 2)

SECTION 1—PROPORTIONAL RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are proportional rates which apply from points in California to points in Montana, Oregon and Washington named herein and may be used only as factors in arriving at through rates by adding to the proportional rates named in this Section the Basing rates named in Section 2.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

FROM POINTS ON SP IN CALIFORNIA

Item	TO POINTS IN MONTANA	Melrose (Oakland) Milpitas ‡Oakland ‡San Francisco San Jose			Route (see Section 3)	‡Los Angeles Raymer South Gate (Los Angeles)			Route (see Section 3)
		Column A	Column B	Column C		Column A	Column B	Column C	
	Billings	$152.40	$123.70	$103.60	11, 12, 13-A, 13-B, 14	$167.50	$135.80	$113.70	11, 12, 13-A, 13-B, 14
	Butte	135.50	110.20	92.30	11, 12, 13-A, 13-B, 14, 25, 26-B	160.30	130.00	108.90	11, 12, 13-A, 13-B, 14, 26-A
	Glasgow	175.60	142.30	119.10	11, 13-B	190.70	154.30	129.20	11, 13-B
	Glendive	177.10	143.50	120.10	12, 13-A, 14	192.20	155.60	130.20	12, 13-A, 14
	Great Falls	145.20	118.00	98.90	11, 13-B	160.30	130.00	108.90	11, 13-B
425	Kalispell	143.80	116.80	97.90	11, 13-B	187.00	151.40	126.70	11, 13-B
	Laurel	152.40	123.70	103.60	11, 12, 13-A, 13-B, 14	167.50	135.80	113.70	11, 12, 13-A, 13-B, 14
	Livingston	139.80	113.60	95.20	12, 13-A, 14	160.30	130.00	108.90	12, 13-A, 14
	Miles City	168.70	136.70	114.50	12, 13-A, 14	183.60	148.70	124.50	12, 13-A, 14
	Missoula	135.50	110.20	92.30	12, 13-A, 14	160.30	130.00	108.90	12, 13-A, 14
	Sidney	183.20	148.30	124.20	11, 12, 13-A, 13-B, 14	198.40	160.50	134.30	11, 12, 13-A, 13-B, 14

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

FROM POINTS ON WP IN CALIFORNIA

Item	TO POINTS IN MONTANA	Decoto, Melrose (Oakland), Milpitas, ‡Oakland, ‡San Francisco, San Jose			Route (see Section 3)
		Column A	Column B	Column C	
	Billings	$152.40	$123.70	$103.60	24
	Butte	135.50	110.20	92.30	24, 26
	Glasgow	175.60	142.30	119.10	24
450	Great Falls	145.20	118.00	98.90	24
	Kalispell	143.80	116.80	97.90	24
	Laurel	152.40	123.70	103.60	24
	Sidney	183.20	148.30	124.20	24

‡Applies only in connection with Routes 12, 13-A, 14, 25, 26-A or 26-B.
‡Applies only in connection with Route 26.

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SECTION 1—PROPORTIONAL RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are proportional rates which apply from points in California to points in Montana, Oregon and Washington named herein and may be used only as factors in arriving at through rates by adding to the proportional rates named in this Section the Basing rates named in Section 2.

Vehicles, as described in and subject to the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON (except as noted)	FROM POINTS ON SP IN CALIFORNIA						Route (see Section 3)
		Melrose (Oakland) Milpitas δOakland δSan Francisco San Jose			δLos Angeles Raymer South Gate (Los Angeles)			
		Column A	Column B	Column C	Column A	Column B	Column C	
500	Bend.....Ore.	$73.00	$59.90	$52.50	$109.00	$88.70	$76.50	26-C, δ(Fm)26-D, 26-E
	‡Kennewick.....	90.00	73.20	62.30	126.00	102.00	86.30	5, 6, 7, 8, 9 or 10
	‡Pasco.....	90.00	73.20	62.30	126.00	102.00	86.30	
	Renton.....	78.50	(3)64.00 (3)71.50	54.70	116.50	(3)94.40 (3)105.70	80.00	1, 2, 3, 4
	‡Spokane.....	116.00	94.00	79.70	154.00	124.40	105.00	11, 12, 13, 14, 15
	Vancouver.....	76.00	62.90	55.50	112.00	91.70	79.50	26-G, 26-H, 26-I, 26-J
	‡Wenatchee..... (JT-9378)	100.00	81.20	69.00	136.00	110.00	93.00	16

Vehicles, as described in and subject to the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON (except as noted)	FROM POINTS ON WP IN CALIFORNIA			Route (See Section 3)
		Decoto, Melrose (Oakland), Milpitas, San Jose			
		Column A	Column B	Column C	
550	Bend.....Ore.	$73.00	$59.90	$52.50	26F
	‡Kennewick.....	90.00	73.20	62.30	(1)18 or (1)20
	‡Pasco.....	90.00	73.20	62.30	(1)18, 19
	Renton.....	78.50	(3)64.00 (3)71.50	54.70	(1)18, 21, (1)22 or (1)23
	‡Spokane.....	116.00	94.00	79.70	(1)18, (1)20 or 24
	Vancouver.....	76.00	62.90	55.50	26-K
	‡Wenatchee.....	100.00	81.20	69.00	24

(Fm) Applies to points named only.

δ Applies only in connection with Routes, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 26-D, 26-E, 26-H, δ26-I or 26-J. (CJT-1535)

For explanation of other reference marks, see concluding page(s) of this Tariff.

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

For Keys to route see Section 3.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN MONTANA on NP	FROM POINTS IN MONTANA (VIA ROUTE 28)															
		Billings				Butte				Glendive				Laurel			
		Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E
	Big Timbers	$33.53	$26.82	$22.35	$44.71	.....	.....	.....	.....	.....	.....	.....	.....	$29.59	$23.67	$19.73	$39.45
	Billings	17.95	14.36	11.97	23.93	.....	.....	.....	.....	$68.50	$54.80	$45.67	$91.33	17.95	14.36	11.97	23.93
	Bozeman	.....	.....	.....	.....	$36.95	$29.56	$24.63	$49.27	.....	.....	.....	.....	.....	.....	.....	.....
600	Butte	.....	.....	.....	.....	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....
	Circle	72.25	57.80	48.17	96.33	123.75	99.00	82.50	165.00	26.09	20.87	17.39	34.79	76.25	61.00	50.83	101.67
	Columbus	24.08	19.26	16.05	32.11	.....	.....	.....	.....	.....	.....	.....	.....	20.13	16.10	13.42	26.84
	Deer Lodge	.....	.....	.....	.....	22.93	18.34	15.29	30.57	.....	.....	.....	.....	.....	.....	.....	.....
	Forsyth	38.00	30.40	25.33	50.67	97.00	77.60	64.67	129.33	.....	.....	.....	.....	41.75	33.40	27.83	55.67
	Gardiner	55.25	44.20	36.83	73.67	.....	.....	.....	.....	.....	.....	.....	.....	51.25	41.00	34.17	68.33
	Glendive	68.50	54.80	45.67	91.33	127.75	102.20	85.17	170.33	17.95	14.36	11.97	23.93	72.25	57.80	48.17	96.33
610	Helena	.....	.....	.....	.....	29.33	23.46	19.55	39.11	.....	.....	.....	.....	.....	.....	.....	.....
	Hysham	32.21	25.77	21.47	42.95	90.50	72.40	60.33	120.67	.....	.....	.....	.....	36.41	29.13	24.27	48.55
	Laurel	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....	17.95	14.36	11.97	23.93
	Livingston	41.25	33.00	27.50	55.00	.....	.....	.....	.....	.....	.....	.....	.....	38.00	30.40	25.33	50.67
	Miles City	49.50	39.60	33.00	66.00	108.75	87.00	72.50	145.00	31.95	25.56	21.30	42.60	53.25	42.60	35.50	71.00
	Philipsburg	.....	.....	.....	.....	27.77	21.82	18.18	37.03	.....	.....	.....	.....	.....	.....	.....	.....
	Red Lodge	28.97	23.18	19.31	38.63	.....	.....	.....	.....	.....	.....	.....	.....	24.65	19.72	16.43	32.87
	Sidney	81.25	65.00	54.17	108.33	.....	.....	.....	.....	27.53	22.02	18.35	36.71	85.00	68.00	56.67	113.33
620	Terry	59.00	47.20	39.33	78.67	118.25	94.60	78.83	157.67	22.93	18.34	15.29	30.57	63.00	50.40	42.00	84.00
	Three Forks	.....	.....	.....	.....	29.25	23.40	19.50	39.00	.....	.....	.....	.....	.....	.....	.....	.....
	Townsend	.....	.....	.....	.....	36.41	29.13	24.27	48.55	.....	.....	.....	.....	58.25	46.60	38.83	77.67
	Wibaux	75.75	60.60	50.50	101.00	135.00	108.00	90.00	180.00	21.06	16.85	14.04	28.08	79.50	63.60	53.00	106.00

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN MONTANA on NP	FROM POINTS IN MONTANA (VIA ROUTE 28)															
		Livingston				Missoula				Miles City				Sidney			
		Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E
	Big Timbers	$22.06	$17.65	$14.71	$29.41	.....	.....	.....	.....	$70.00	$56.00	$46.67	$93.33	.....	.....	.....	.....
	Billings	41.25	33.00	27.50	55.00	.....	.....	.....	.....	49.50	39.60	33.00	66.00	.....	.....	.....	.....
	Bozeman	19.81	15.85	13.21	26.41	$65.75	$52.60	$43.83	$87.67	85.00	68.00	56.67	113.33	.....	.....	.....	.....
630	Butte	.....	.....	.....	.....	42.00	33.60	28.00	56.00	.....	.....	.....	.....	.....	.....	.....	.....
	Circle	95.50	76.40	63.67	127.33	.....	.....	.....	.....	42.25	33.80	28.17	56.33	$38.00	$30.40	$25.33	$50.67
	Columbus	31.69	25.35	21.13	42.25	.....	.....	.....	.....	59.75	47.80	39.83	79.67	.....	.....	.....	.....
	Deer Lodge	.....	.....	.....	.....	33.53	26.82	22.35	44.71	.....	.....	.....	.....	.....	.....	.....	.....
	Forsyth	67.00	53.60	44.67	89.33	.....	.....	.....	.....	25.23	20.18	16.82	33.64	55.50	44.40	37.00	74.00
	Gardiner	28.10	22.48	18.73	37.47	.....	.....	.....	.....	92.75	74.20	61.83	123.67	.....	.....	.....	.....
	Glendive	97.75	78.20	65.17	130.33	.....	.....	.....	.....	31.95	25.56	21.30	42.60	27.53	22.02	18.35	36.71
640	Hamilton	.....	.....	.....	.....	25.51	20.41	17.01	34.01	.....	.....	.....	.....	.....	.....	.....	.....
	Helena	.....	.....	.....	.....	41.00	32.80	27.33	54.67	.....	.....	.....	.....	.....	.....	.....	.....
	Hysham	60.50	48.40	40.33	80.67	.....	.....	.....	.....	30.90	24.72	20.60	41.20	.....	.....	.....	.....
	Laurel	38.00	30.40	25.33	50.67	.....	.....	.....	.....	53.25	42.60	35.50	71.00	.....	.....	.....	.....
	Livingston	17.95	14.36	11.97	23.93	.....	.....	.....	.....	78.75	63.00	52.50	105.00	.....	.....	.....	.....
	Miles City	78.75	63.00	52.50	105.00	.....	.....	.....	.....	17.95	14.36	11.97	23.93	43.75	35.00	29.17	58.33
	Missoula	.....	.....	.....	.....	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....
650	Philipsburg	.....	.....	.....	.....	32.21	25.77	21.47	42.95	.....	.....	.....	.....	.....	.....	.....	.....
	Polson	.....	.....	.....	.....	29.85	23.88	19.90	39.80	.....	.....	.....	.....	.....	.....	.....	.....
	Red Lodge	48.25	38.60	32.17	64.33	.....	.....	.....	.....	64.25	51.40	42.83	85.67	.....	.....	.....	.....
	Sidney	110.50	88.40	73.67	147.33	.....	.....	.....	.....	43.75	35.00	29.17	58.33	17.95	14.36	11.97	23.93
	Superior	.....	.....	.....	.....	28.97	23.18	19.31	38.63	.....	.....	.....	.....	.....	.....	.....	.....
	Terry	88.25	70.60	58.83	117.67	.....	.....	.....	.....	23.21	18.57	15.47	30.95	35.36	28.29	23.57	47.15
	Thompson Falls	.....	.....	.....	.....	38.00	30.40	25.33	50.67	.....	.....	.....	.....	.....	.....	.....	.....
660	Three Forks	28.10	22.48	18.73	37.47	58.00	46.40	38.67	77.33	92.75	74.20	61.83	123.67	.....	.....	.....	.....
	Townsend	.....	.....	.....	.....	49.25	39.40	32.83	65.67	.....	.....	.....	.....	.....	.....	.....	.....
	Wibaux	104.75	83.80	69.83	139.67	.....	.....	.....	.....	38.25	30.60	25.50	51.00	33.53	26.82	22.35	44.71

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN MONTANA on GN	FROM Billings, Mont.				FROM Butte, Mont.				FROM Glasgow, Mont.				FROM Great Falls, Mont.				ROUTE (See Section 3)
		Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	
		$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	
670	Billings	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....	67.25	53.80	44.83	89.67	34
	Boulder	.....	.....	.....	.....	22.35	17.88	14.90	29.80	.....	.....	.....	.....	42.75	34.20	28.50	57.00	
	Browning	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	43.25	34.60	28.83	57.67	
	Butte	.....	.....	.....	.....	17.95	14.36	11.97	23.93	.....	.....	.....	.....	51.75	41.40	34.50	69.00	
	Chester	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	44.00	35.20	29.33	58.67	
680	Chinook	.....	.....	.....	.....	.....	.....	.....	.....	46.75	37.40	31.17	62.33	46.00	36.80	30.67	61.33	
	Choteau	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	26.95	21.56	17.97	35.93	
	Conrad	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	29.25	23.40	19.50	39.00	
	Cut Bank	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	39.50	31.60	26.33	52.67	
	Fort Benton	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	23.79	19.03	15.86	31.72	
	Glasgow	.....	.....	.....	.....	.....	.....	.....	.....	17.95	14.36	11.97	23.93	80.75	64.60	53.83	107.67	
690	Great Falls	67.25	53.80	44.83	89.67	.....	.....	.....	.....	.....	.....	.....	.....	17.95	14.36	11.97	23.93	
	Havre	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	40.50	32.40	27.00	54.00	
	Helena	.....	.....	.....	.....	29.33	23.46	19.55	39.11	.....	.....	.....	.....	35.68	29.34	24.45	48.91	
	Laurel	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....	71.00	56.80	47.33	94.67	
	Lewistown	44.25	35.40	29.50	59.00	.....	.....	.....	.....	.....	.....	.....	.....	39.00	31.20	26.00	52.00	
	Malta	.....	.....	.....	.....	.....	.....	.....	.....	30.64	24.51	20.43	40.85	63.00	50.40	42.00	84.00	
700	Plentywood	.....	.....	.....	.....	.....	.....	.....	.....	48.50	38.80	32.33	64.67	.....	.....	.....	.....	
	Poplar	.....	.....	.....	.....	.....	.....	.....	.....	30.64	24.51	20.43	40.85	.....	.....	.....	.....	
	Scobey	.....	.....	.....	.....	.....	.....	.....	.....	38.00	30.40	25.33	50.67	.....	.....	.....	.....	
	Shelby	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	34.31	27.45	22.87	45.75	
	Sidney	.....	.....	.....	.....	.....	.....	.....	.....	47.25	37.80	31.50	63.00	.....	.....	.....	.....	
	Stanford	55.50	44.40	37.00	74.00	.....	.....	.....	.....	.....	.....	.....	.....	29.25	23.40	19.50	39.00	
	Sweet Grass	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	42.25	33.80	28.17	56.33	
	Wolf Point	.....	.....	.....	.....	.....	.....	.....	.....	26.09	20.87	17.39	34.79	.....	.....	.....	.....	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN MONTANA on GN	FROM Kalispell, Mont.				FROM Laurel, Mont.				FROM Sidney, Mont.				ROUTE (See Section 3)
		Col. A	Col. B	Col C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	
		$	$	$	$	$	$	$	$	$	$	$	$	
710	Billings	.....	.....	.....	.....	17.95	14.36	11.97	23.93	.....	.....	.....	.....	34
	Cut Bank	46.00	36.80	30.67	61.33	.....	.....	.....	.....	.....	.....	.....	.....	
	East Glacier Park	35.10	28.08	22.40	46.80	.....	.....	.....	.....	.....	.....	.....	.....	
	Eureka	29.33	23.46	19.55	39.11	.....	.....	.....	.....	.....	.....	.....	.....	
	Glasgow	.....	.....	.....	.....	.....	.....	.....	.....	47.25	37.80	31.50	63.00	
	Great Falls	.....	.....	.....	.....	71.00	56.80	47.33	94.67	.....	.....	.....	.....	
720	Kalispell	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....	
	Laurel	.....	.....	.....	.....	17.95	14.36	11.97	23.93	.....	.....	.....	.....	
	Lewistown	.....	.....	.....	.....	48.00	38.40	32.00	64.00	.....	.....	.....	.....	
	Libby	35.36	28.29	23.57	47.15	.....	.....	.....	.....	.....	.....	.....	.....	
	Plentywood	.....	.....	.....	.....	.....	.....	.....	.....	34.05	27.24	22.70	45.40	
	Poplar	.....	.....	.....	.....	.....	.....	.....	.....	30.38	24.30	20.25	40.51	
	Scobey	.....	.....	.....	.....	.....	.....	.....	.....	43.50	34.80	29.00	58.00	
730	Shelby	52.00	41.60	34.67	69.33	.....	.....	.....	.....	.....	.....	.....	.....	
	Sidney	.....	.....	.....	.....	.....	.....	.....	.....	17.95	14.36	11.97	23.93	
	Stanford	.....	.....	.....	.....	55.50	44.40	37.00	74.00	.....	.....	.....	.....	
	Sweet Grass	60.75	48.60	40.50	81.00	.....	.....	.....	.....	.....	.....	.....	.....	
	West Glacier	21.38	17.10	14.25	28.51	.....	.....	.....	.....	.....	.....	.....	.....	
	White Fish	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....	
	Wolf Point	.....	.....	.....	.....	.....	.....	.....	.....	36.15	28.92	24.10	48.20	

[I.C.C. 390]

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SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN OREGON on OT, UP	From Bend, Ore. Column A	Column B	Column C	Column E	Route (See Section 3)
800	Bend	$12.00	$ 9.60	$ 8.00	$16.00	30, 31
	Madras	24.08	19.26	16.05	32.11	
	Redmond	17.95	15.55	13.95	21.95	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON (except as noted) on TS&D (JT-9607)	FROM ☒Kennewick, Wash. ☒Pasco, Wash. Column A	Column B	Column C	Column D	Column E	Route (see Section 3)
900	Lewiston.....Ida.	$44.00	$35.20	$29.34	$88.00	$58.67	
	Moscow..... "	52.25	41.80	34.83	104.50	69.67	
	Potlatch..... "	56.00	44.80	37.33	112.00	74.67	
910	Heppner.....Ore.	35.36	28.29	23.58	70.72	47.17	
	Hermiston..... "	23.50	18.80	15.70	47.00	31.33	
	Milton-Freewater.... "	28.67	22.93	19.11	57.34	38.23	
	Pendleton..... "	29.06	23.25	19.37	58.12	38.75	
	Pilot Rock..... "	35.10	28.08	23.40	70.20	46.80	
920	♦Bingen-White Salmon....	55.00	44.00	36.67	.....	73.33	
	Colfax.....	45.00	36.00	30.00	90.00	60.00	
	Dayton.....	28.54	26.83	19.04	57.08	38.05	
	♦Goldendale.....	43.00	34.40	28.67	.....	57.33	
	Grandview.....	24.36	19.48	15.74	48.72	32.48	
	Grange.....	29.33	23.45	19.55	58.66	39.11	
	Kennewick.....	12.00	9.60	8.00	24.00	16.00	
	♦Klickitat.....	55.00	44.00	36.67	.....	73.33	
	Lind.....	28.80	23.04	19.20	57.60	38.40	27
930	Moses Lake.....	38.00	30.50	16.03	76.00	50.67	
	Naches.....	41.88	33.50	27.92	83.76	55.84	
	Odessa.....	31.16	24.93	20.77	62.32	41.55	
	Othello.....	28.01	22.41	18.67	56.02	37.35	
	Palouse.....	56.00	44.80	37.33	112.00	74.67	
940	Pasco.....	12.00	9.60	8.00	24.00	16.00	
	Pomeroy.....	37.20	29.76	24.80	74.40	49.60	
	Prosser.....	22.06	17.65	14.71	44.12	29.41	
	Pullman.....	52.25	41.80	34.83	104.50	69.67	
	Richland.....	17.95	14.36	13.95	35.90	23.93	
	Ritzville.....	33.26	26.61	22.17	66.52	44.35	
950	Sunnyside.....	26.37	21.09	17.58	52.74	35.16	
	Toppenish.....	31.16	24.93	20.77	62.32	41.55	
	Walla Walla.....	25.80	20.64	17.20	51.60	34.40	
	Wapato.....	32.21	25.77	21.47	64.42	42.95	
	Washtucna.....	29.32	23.46	19.55	58.64	39.09	
	Yakima.....	34.05	27.24	22.70	68.10	45.40	

For explanation of reference marks, see concluding page(s) of this Tariff.

[fol. 590a]

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SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON on TS&D (JT-9607)	FROM Renton, Wash.					Route (see Section 3)
		Column A	Column B	Column C	Column D	Column E	
	Aberdeen	$37.20	$29.76	$24.80	$74.40	$49.60	
	Almira	67.00	53.60	.....	.....	89.33	
	Anacortes	39.38	31.50	23.92	78.76	52.51	
1000	Arlington	29.25	23.40	19.50	58.50	39.00	
	Auburn	17.95	14.36	11.96	35.90	23.93	
	Bellevue	17.95	14.36	11.96	35.90	23.93	
	Bellingham	37.98	30.98	25.32	75.96	50.64	
	Bothell	18.87	15.09	12.58	37.74	25.16	
	Bremerton	28.10	22.48	18.73	56.20	37.47	
	Brewster	63.50	50.80	.....	.....	84.67	
	♦Camas	57.50	46.00	.....	.....	76.67	
	Cashmere	45.50	36.40	.....	.....	60.67	
	Castle Rock	38.00	30.40	.....	.....	50.67	
	Centralia	32.00	25.60	.....	.....	42.67	
1010	Chehalis	34.31	27.45	.....	.....	45.75	
	Chelan	57.25	45.80	.....	.....	76.33	
	Cheney	80.00	64.00	.....	.....	106.66	
	Chewelah	98.25	78.60	.....	.....	131.00	
	Cle Elum	27.25	21.80	18.17	54.50	36.33	
	Colfax	84.75	67.80	.....	.....	113.00	
	Colville	100.50	80.40	.....	.....	134.00	
	Coulee City	62.00	49.60	.....	.....	82.67	
	Coupeville	♦40.50	♦32.40	24.51	73.52	49.01	
	Davenport	76.00	60.80	.....	.....	101.33	
	Dayton	84.25	67.40	.....	.....	112.33	
	Deer Park	90.00	72.00	.....	.....	120.00	
	Dishman	85.75	68.60	.....	.....	114.33	27
	East Stanwood	26.25	21.00	17.50	52.50	35.00	
1020	Eatonville	25.81	20.65	17.21	51.62	34.41	
	Edmonds	21.77	17.41	14.51	43.54	29.03	
	Ellensburg	38.75	31.00	25.83	77.50	51.67	
	Elma	31.68	25.34	21.12	63.36	42.24	
	Enumclaw	20.43	16.34	13.62	40.86	27.24	
	Ephrata	54.50	43.60	.....	.....	72.67	
	Everett	23.50	18.80	15.66	47.00	31.33	
	Ferndale	39.50	31.60	26.33	79.00	52.67	
	Friday Harbor	♦46.42	♦37.14	23.54	70.62	47.08	
	Gig Harbor	26.61	21.29	17.74	53.22	35.48	
1030	Goldendale	64.50	51.60	.....	.....	86.00	
	Grand Coulee	73.50	58.80	.....	.....	98.00	
	Grand View	59.00	47.20	.....	.....	78.66	
	Hoquiam	38.50	30.80	25.66	77.00	51.33	
	Issaquah	17.95	14.36	11.96	35.90	23.93	
	Kalama	45.50	36.40	.....	.....	60.67	
	Kelso	43.75	35.00	.....	.....	58.33	
	Kennewick	69.25	55.40	.....	.....	92.33	
	Kent	17.95	14.36	11.96	35.90	23.93	
	Kirkland	17.95	14.36	11.96	35.90	23.93	
	Klickitat	70.50	56.40	.....	.....	94.00	
1040	Leavenworth	42.50	34.00	.....	.....	56.67	
	Lind	66.25	53.00	.....	.....	88.33	
	Longview	44.50	35.60	.....	.....	59.33	
	Lynden	41.00	32.80	27.33	82.00	54.67	
	Marysville	24.94	19.95	16.63	49.88	33.25	
	Metaline Falls	108.00	86.40	.....	.....	144.00	
	Monroe	22.64	18.11	15.09	45.28	30.19	

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SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

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Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON on TS&D (JT-9607)	FROM Renton, Wash.					Route (see Section 3)
		Column A	Column B	Column C	Column D	Column E	
	Montesano	$34.31	$27.45	$22.88	$68.62	$45.75	
	Morton	32.47	25.98	21.94	64.94	47.15	
	Mt. Vernon	31.16	24.93	20.78	62.32	41.55	
	Moses Lake	56.25	45.00	.....	.....	75.00	
1050	Naches	32.75	26.20	.....	.....	43.66	
	Newport	96.00	76.80	.....	.....	128.00	
	North Bend	21.06	16.85	14.04	42.12	28.08	
	Oak Harbor	39.75	31.80	26.50	79.50	53.00	
	Odessa	66.75	53.40	.....	.....	89.00	
	Okanogan	69.75	55.80	.....	.....	93.00	
	Olympia	25.80	20.64	17.20	51.60	34.40	
	Omak	70.75	56.60	.....	.....	94.33	
	Oroville	68.75	55.00	.....	.....	91.67	
	Othello	65.25	52.20	.....	.....	87.00	
	Palouse	89.00	71.20	.....	.....	118.66	
1060	Pasco	69.25	55.40	.....	.....	92.33	
	Pomeroy	90.00	72.00	.....	.....	120.00	
	Port Angeles	27.46	21.97	18.30	54.92	36.61	
	Port Orchard	27.98	22.38	18.65	55.96	37.31	
	Port Townsend	25.46	20.37	16.97	50.92	33.95	
	Poulsbo	33.33	26.66	22.22	66.66	44.44	
	Prosser	48.25	38.60	.....	.....	64.33	
	Pullman	86.25	69.00	.....	.....	115.00	
	Puyallup	18.25	14.60	12.17	36.50	24.33	
	Quincy	51.75	41.40	.....	.....	69.00	
	Raymond	42.25	33.80	28.16	84.50	56.33	
	Renton	14.50	11.60	9.66	29.00	19.33	
	Republic	87.25	69.80	.....	.....	116.33	
	Richland	68.00	54.40	.....	.....	90.66	27
1070	Ritzville	67.50	54.00	.....	.....	90.00	
	Rockford	90.25	72.20	.....	.....	120.33	
	Rosalia	86.75	69.40	.....	.....	115.67	
	Seattle	14.50	11.60	9.66	29.00	19.33	
	Sedro Woolley	◊34.05	◊27.24	16.03	48.10	32.07	
	Shelton	30.11	24.09	20.08	60.22	40.15	
	Snohomish	21.06	18.65	14.04	42.12	28.08	
	Snoqualmie	20.75	16.60	13.95	41.50	28.66	
	Spokane	84.25	67.40	.....	.....	112.33	
	Sprague	73.75	59.00	.....	.....	98.33	
	Stevenson	64.50	51.60	.....	.....	86.00	
1080	Sumner	18.56	14.85	12.37	37.12	24.75	
	Sunnyside	56.75	45.40	.....	.....	75.66	
	Tacoma	18.61	14.89	12.41	37.22	24.81	
	Tonasket	77.00	61.60	.....	.....	102.67	
	Toppenish	52.00	41.60	.....	.....	69.33	
	◊Twisp	72.50	58.00	.....	.....	96.67	
	Vancouver	53.25	42.60	.....	.....	71.00	
	Walla Walla	80.25	64.24	.....	.....	107.07	
	Wapato	50.50	40.40	.....	.....	67.33	
	Washtucna	85.25	68.20	.....	.....	113.66	
	Waterville	55.50	44.40	.....	.....	74.00	
	Wenatchee	48.50	38.80	.....	.....	64.67	
1090	Wenlock	38.00	30.40	.....	.....	50.67	
	White Salmon	65.00	52.00	.....	.....	86.67	
	Winslow	38.33	30.66	25.55	76.66	51.11	
	Woodlawn	48.00	38.40	.....	.....	64.00	
	Woshongal	58.25	46.60	.....	.....	77.67	
	Yakima	47.75	38.20	.....	.....	63.66	

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SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

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Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON (except as noted) on TS&D	FROM ⊠Spokane, Wash.					Route (see Section 3)
		Column A	Column B	Column C	Column D	Column E	
1100	Bonners Ferry.....Ida.	$40.25	$32.20	$26.83	$80.50	$53.67	27
	Couer d'Alene..... "	21.49	17.19	14.33	42.98	28.65	
	Kellogg..... "	31.69	25.35	21.13	63.38	42.25	
	Priest River..... "	27.52	22.01	18.35	55.04	36.69	
	St. Maries..... "	35.34	28.27	23.56	70.68	47.12	
1110	Sand Point.....Ida.	31.95	25.56	21.30	63.90	42.60	
	Wallace..... "	34.57	27.66	23.05	69.14	46.09	
1120	Almira.....	32.47	25.98	21.65	64.94	43.29	
	Cheney.....	17.95	14.36	11.97	35.90	23.93	
	Chewelah.....	28.10	22.48	18.73	56.20	37.47	
	Colville.....	32.47	25.98	21.65	64.94	43.29	
	Davenport.....	22.64	18.11	15.09	45.28	30.19	
1130	Deer Park.....	19.19	15.35	12.79	38.38	25.59	
	Dishman.....	12.00	9.60	8.00	24.00	16.00	
	Fairfield.....	22.35	17.88	14.80	44.70	29.80	
	Ione.....	34.05	27.24	22.70	68.10	45.40	
	Metaline Falls.....	36.94	27.97	23.31	73.88	49.25	
	Newport.....	25.51	20.41	17.01	51.02	34.01	
	Republic.....	45.75	36.60	30.50	91.50	61.00	
	Rockford.....	19.19	15.35	12.79	38.38	25.59	
1140	Rosalia.....	20.91	16.73	13.94	41.82	27.88	
	Spokane.....	12.00	9.60	8.00	24.00	16.00	
	Sprague.....	24.36	19.49	16.24	48.72	32.48	
	Tekoa.....	25.22	20.18	16.82	50.44	33.63	
	Wilbur.....	21.06	16.85	14.04	42.12	28.08	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON on TS&D	FROM ⊠Wenatchee, Wash.					Route (see Section 3)
		Column A	Column B	Column C	Column D	Column E	
1150	Brewster.....	$31.55	$25.24	$21.03	$63.10	$42.07	27
	Cashmere.....	17.95	14.36	11.97	35.90	23.93	
	Chelan.....	24.36	19.49	16.24	48.72	32.48	
	Coulee City.....	30.64	24.51	20.44	61.28	40.85	
	Douglas.....	21.33	17.10	14.25	42.76	28.51	
	Ephrata.....	26.09	20.87	17.39	52.18	34.79	
1160	Grand Coulee.....	37.25	29.80	24.83	74.50	49.67	
	Leavenworth.....	19.81	15.85	13.21	39.62	26.41	
	Okanogan.....	36.41	29.13	24.41	72.82	48.55	
	Omak.....	37.46	29.97	24.98	74.92	49.95	
	Oroville.....	46.75	37.40	31.17	93.50	62.33	
1170	Quincy.....	21.20	16.96	14.13	42.40	28.27	
	Tonasket.....	42.50	34.00	28.33	85.00	56.67	
	Twisp.....	36.15	28.92	24.10	72.30	48.20	
	Waterville.....	20.44	16.35	13.63	40.88	27.25	
	Wenatchee.....	12.00	9.60	8.00	24.00	16.00	

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Vehicles, as described in, and subject to, provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON (except as noted) on CamP, NP, WWV	FROM Kennewick, Wash. Pasco, Wash.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1200	Craigmont.....Ida.	$59.75	$47.80	$39.83	$79.66	35
	Grangeville..... "	67.50	54.00	45.00	90.00	35
	Lewiston..... "	44.00	35.20	29.34	.....	35
	Moscow..... "	52.25	41.80	34.83	.....	28
	Orofino..... "	50.25	47.40	39.50	79.00	35
	Milton-Freewater.....Ore.	28.67	22.93	19.11	.....	29
	Pendleton..... "	29.06	23.25	19.37	.....	28
1210	Coulee City.....	52.00	41.60	34.67	69.33	28
	Dayton.....	28.54	26.83	19.04	.....	
	Grandview.....	24.36	19.48	15.74	.....	
	Kennewick.....	12.00	9.60	8.00	.....	
	Lind.....	28.80	23.04	19.20	.....	
	Naches.....	41.88	33.50	27.92	.....	
	Palouse.....	56.00	44.80	37.33	.....	
1220	Pasco.....	12.00	9.60	8.00	.....	28
	Prosser.....	22.06	17.65	14.71	.....	
	Pullman.....	52.25	41.80	34.83	.....	
	Richland.....	17.95	14.36	13.95	.....	
	Ritzville.....	33.26	26.61	22.17	.....	
1230	Sunnyside.....	26.37	21.09	17.58	.....	
	Toppenish.....	31.16	24.93	20.77	.....	
	Walla Walla.....	25.80	20.64	17.20	.....	
	Wapato.....	32.21	25.77	21.47	.....	
	Yakima.....	34.05	27.24	22.70	.....	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON (except as noted) on NP	FROM Spokane, Wash.			Route (see Section 3)
		Column A	Column B	Column C	
1250	Coeur d'Alene.....Ida.	$21.40	$17.19	$14.33	28
	Sand Point..... "	31.95	25.56	21.30	
	Wallace..... "	34.57	27.66	23.05	

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Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON on NP	FROM Spokane, Wash.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1260	Almira	$32.47	$25.98	$21.95	$	28
	Cheney	17.95	14.36	11.97	.....	
	Coulee City	37.46	29.97	24.97	49.95	
	Davenport	22.64	18.11	15.09	.....	
	Rosalia	20.91	16.73	13.94	.....	
	Spokane	12.00	9.60	8.00	.....	
	Sprague	24.36	19.49	16.24	.....	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON (except as noted) on CamP and UP	FROM Kennewick, Wash.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
	Craigmont, Ida.	$59.75	$47.80	$39.83	$79.66	33
	Grangeville, Ida.	67.50	54.00	45.00	90.00	33
1270	Lewiston, Ida.	44.00	35.20	29.34	.....	33
	Moscow, Ida.	52.25	41.80	34.83	.....	33
	Orofino, Ida.	59.25	47.40	39.50	79.00	33
1280	Heppner, Ore.	35.36	28.29	23.58	.....	30
	Hermiston, "	23.50	18.80	15.70	.....	
	Milton-Freewater, "	28.67	22.93	19.11	.....	
	Pendleton, "	29.06	23.25	19.37	.....	
	Pilot Rock, "	35.10	28.08	23.40	.....	
1290	Colfax	45.00	36.00	30.00	.....	
	Dayton	28.54	26.83	19.04	.....	
	Grandview	24.36	19.48	15.74	.....	
	Kennewick	12.00	9.60	8.00	.....	
1300	Pomeroy	37.20	29.76	24.80	.....	
	Pullman	52.25	41.80	34.83	.....	
	Richland	17.95	14.36	13.95	.....	
1310	Sunnyside	26.37	21.09	17.58	.....	
	Walla Walla	25.80	20.64	17.20	.....	
	Washtucna	29.32	23.46	19.55	.....	
	Yakima	34.05	27.24	22.70	.....	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON (except as noted) on UP	FROM Spokane, Wash.			Route (see Section 3)
		Column A	Column B	Column C	
1230	Kellogg, Ida.	$31.69	$25.35	$21.13	30
	Wallace, "	34.57	27.66	23.05	
1280	Cheney	17.95	14.36	11.97	
	Dishman	12.00	9.60	8.00	
	Rockford	19.19	15.35	12.79	
	Spokane	12.00	9.60	8.00	
	Tekoa	25.22	20.18	16.82	

SECTION 2—BASING RATES

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Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON, (except as noted) on SI	FROM Spokane, Wash.			Route (see Section 3)
		Column A	Column B	Column C	
1380	Bonners Ferry.....Ida.	$40.25	$32.20	$26.83	36
	Coeur d'Alene..... "	21.49	17.19	14.33	
	Sand Point..... "	31.95	25.56	21.30	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN MONTANA on GN	FROM SPOKANE, WASH.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1400	Libby.....	$53.50	$42.80	$ 35.66	$71.33	34

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON, (except as noted) on GN	FROM Spokane, Wash.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1402	Bonners Ferry.....Ida.	$40.25	$32.20	$26.83	$53.67	34
	Coeur d'Alene..... "	21.49	17.19	14.33	28.65	
	Priest River..... "	27.52	22.01	18.35	36.69	
	Sand Point..... "	31.95	25.56	21.30	42.60	
1404	Chewelah.....	28.10	22.48	18.73	37.47	
	Colville.....	32.47	25.98	21.65	43.29	
1405	Deer Park.....	19.19	15.35	12.79	25.59	
	Dishman.....	12.00	9.60	8.00	16.00	
	Newport.....	25.51	20.41	17.01	34.01	
	Republic.....	45.75	36.60	30.50	61.00	
	Rosalia.....	20.91	16.73	13.94	27.88	
	Spokane.....	12.00	9.60	8.00	16.00	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON, on GN	FROM Wenatchee, Wash.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1406	Brewster.....	$31.55	$25.24	$21.03	$42.07	34
	Cashmere.....	17.95	14.36	11.97	23.93	
	Chelan.....	24.36	19.49	16.24	32.48	
	Douglas.....	21.38	17.10	14.25	28.51	
	Ephrata.....	26.09	20.87	17.39	34.79	
1407	Leavenworth.....	19.81	15.85	13.21	26.41	
	Okanogan.....	36.41	29.13	24.41	48.55	
	Omak.....	37.46	29.97	24.98	49.95	
	Oroville.....	46.75	37.40	31.17	62.33	
1408	Quincy.....	21.20	16.96	14.13	28.27	
	Tonasket.....	42.50	34.00	28.33	56.67	
	Wenatchee.....	12.00	9.60	8.00	16.00	

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SECTION 2—BASING RATES

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Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN OREGON (except as noted) on UP	FROM VANCOUVER, WASH.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1410	Arlington	$46.75	$37.40	$31.17	$62.33	20
	Condon	56.25	45.00	37.50	75.00	
	Heppner	61.25	49.00	40.83	81.67	
	Hood River	30.11	24.09	20.07	40.14	
	Madras	31.50	25.20	21.00	42.00	
	Moro	47.50	38.00	31.63	63.33	
	Redmond	50.25	40.20	33.25	67.00	
	The Dalles	35.63	28.50	23.75	47.51	
	Vancouver, Wash.	12.00	9.60	8.00	16.00	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON on NP	FROM VANCOUVER, WASH.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1420	Castle Rock	$26.66	$21.33	$17.77	$30.66	28
	Centralia	35.10	28.08	23.40	46.80	
	Chehalis	33.79	27.03	22.52	45.05	
	Kalama	22.35	17.88	14.80	29.80	
	Kelso	23.50	18.80	15.66	31.33	
	Longview	23.50	18.80	15.66	31.33	
	Ridgefield	18.56	17.95	13.95	24.33	
	Vancouver	12.00	9.60	8.00	16.00	
	Winlock	30.11	24.09	20.08	40.14	
	Woodland	18.56	17.95	13.95	24.33	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON (except as noted) on SP&S	FROM VANCOUVER, WASHINGTON				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1430	Astoria, Ore.	$38.00	$30.40	$25.33	$50.66	32
	Clatskanie, "	29.25	23.40	19.50	39.00	
	Rainier, "	25.51	20.41	17.01	34.01	
	St. Helens, "	22.06	17.69	14.74	29.41	
	Seaside, "	42.50	34.00	28.66	56.66	
	Vernonia, "	35.89	28.71	23.92	47.85	
	Bingen-White Salmon	29.33	23.46	19.55	39.11	
	Camas	17.95	15.55	13.95	21.95	
	Goldendale	43.50	34.80	29.00	56.67	
	Klickitat	38.00	30.40	25.33	50.67	
	Stevenson	24.06	19.26	16.05	32.11	
	Vancouver	12.00	9.60	8.00	16.00	

Item	ROUTING INSTRUCTIONS
1500	(a) The rates named in this tariff apply only via the routes and junction points authorized in connection with individual rates or in this Section, except that when in the case of pronounced traffic congestion (not an embargo), washout, wreck, or other similar emergency, or through carriers' error, carriers forward shipments via other junction points of the same carriers or via the lines of other carriers parties to the Tariff, the rate will be that specified in this Tariff, but not higher than the rate applicable via the route of movement. Departure from the terms of the Amended Fourth Section of the Interstate Commerce Act is permitted by authority of ICC Fourth Section Order 10500, issued July 25, 1930. (b) The routes shown in this Section are those via which an agreed basis of divisions is in force and as shown are for northbound shipments. For southbound shipments, the northbound route will read in reverse. (c) Rates named in this Tariff From, To or Between stations on SP or for that portion of the haul over the lines of SP apply via routes provided in SP GFD Circular 199-G, ICC No. 1511, except: Rates named in this Tariff from South Gate (Los Angeles) or Raymer, Cal., apply via Saugus and Lancaster, Cal., or via Chatsworth or San Fernando and Salinas, Cal. (d) Except as otherwise provided, rates in this Tariff From, To or Between stations on the UP or for that portion of the haul over lines of UP apply via routes provided in UP Tariff 9069-A, ICC No. 5313. (e) Except as may be otherwise provided in connection with internal routing of GN, rates named From, To or Between stations or for that portion of the haul over GN will apply only as indicated in connection with routing.

Item	EXPLANATION OF ROUTE NUMBERS (Subject to Item 1500)	
	ROUTE	ROUTING IN CONNECTION WITH PROPORTIONAL RATES IN SECTION 1
1510		To Renton, Washington:
	1	SP, Portland, Ore., GN, Seattle or Black River, Wash., PC.
	2	SP, Portland, Ore., NP, Seattle or Black River, Wash., PC.
	3	SP, Portland, Ore., NP.
	4	SP, Portland, Ore., UP, Seattle or Black River, Wash., PC.
		To Kennewick, Washington:
	5	SP, Portland, Ore., NP.
	6	SP, Portland, Ore., SP&S.
	7	SP, Portland, Ore., SP&S, Pasco, Wash., NP.
	8	SP, Portland, Ore., UP.
		To Pasco, Washington:
	9	SP, Portland, Ore., NP.
	10	SP, Portland, Ore., SP&S.
		To Billings, Butte, Glasgow, Glendive, Great Falls, Kalispell, Laurel, Livingston, Miles City, Missoula, or Sidney, Montana, Spokane, Washington:
	11	SP, Portland, Ore., GN.
	12	SP, Portland, Ore., NP.
	13	SP, Portland, Ore., SP&S.
	13-A	SP, Portland, Ore., SP&S, Spokane, Wash., NP.
	13-B	SP, Portland, Ore., SP&S, Spokane, Wash, GN.
	14	SP, Portland, Ore., SP&S, Pasco, Wash., NP.
		To Spokane, Washington:
	15	SP, Portland, Ore., UP.
		To Wenatchee, Washington:
	16	SP, Portland, Ore., GN.
1520		To Kennewick, Pasco, Renton or Spokane, Wash.
	18	WP, Bieber, Cal., GN, Portland, Ore., NP.
		To Pasco, Wash.
	19	WP, Bieber, Cal., GN, Bend, Ore., OT, Wishram, Wash., SP&S.
		To Kennewick or Spokane, Wash.
	20	WP, Bieber, Cal., GN, Portland, Ore., UP.
		To Renton, Wash.
	21	WP, Bieber, Cal., GN, Seattle or Black River, Wash., PC.
		To Renton, Wash.
	22	WP, Bieber, Cal., GN, Portland, Ore., NP, Seattle or Black River, Wash., PC.
		To Renton, Wash.
	23	WP, Bieber, Cal., GN, Portland, Ore., UP, Seattle or Black River, Wash., PC.
		To Billings, Butte, Glasgow, Great Falls, Kalispell, Laurel or Sidney, Montana, Spokane or Wenatchee, Wash.
	24	WP, Bieber, Cal., GN.
1530		To Butte, Mont.
	25	SP, Ogden, Utah, UP.
	26	WP, Salt Lake City, Utah, UP.
	26-A	SP, Los Angeles, Cal., UP.
	26-B	SP, Wells, Nev., UP.
		To Bend, Ore.
	26-C	SP, Chemult, Ore., GN.
	26-D	SP, Portland, Ore., SP&S, Wishram, Wash., OT.
	26-E	SP, Portland, Ore., UP.
	26-F	WP, Bieber, Cal., GN
		To Vancouver, Wash.
	26-G	SP, Portland, Ore., GN
	26-H	SP, Portland, Ore., NP
	26-I	SP, Portland, Ore., SP&S.
	26-J	SP, Portland, Ore., UP.
	26-K	WP, Bieber, Cal., GN, Bend, Ore., OT, Wishram, Wash., SP&S.

EXPLANATION OF ROUTE NUMBERS (Subject to Item 1560)

Item	ROUTE	ROUTING IN CONNECTION WITH BASING RATES IN SECTION 2
1540	27	Transport Storage & Distributing Co. (M.C. 108121).
	28	NP direct.
	29	NP, Walla Walla, Wash., WWV.
	30	UP direct.
	31	OT direct.
1550	32	SP&S direct.
	33	UP, Riperia, Wash., CamP.
	34	GN direct.
	35	NP, Riperia, Wash., CamP.
	36	SI direct.

EXPLANATION OF ABBREVIATIONS

For explanation of carrier abbreviations, see page 2

Abbreviation	EXPLANATION
COD.....	Collect on Delivery.
GFD.....	General Freight Department.
ICC.....	Interstate Commerce Commission.
NPCFB.....	North Pacific Coast Freight Bureau, Agent.
PSFB.....	Pacific Southcoast Freight Bureau, Agent.

EXPLANATION OF REFERENCE MARKS

Reference Marks	EXPLANATION
↓	Reduction.
↑	Increase.
↑	In connection with shipments moving beyond, via Route 27, rates apply only on Automobiles, passenger, set-up.
S	Rates apply only on Automobiles, passenger, set-up.
①	Applies only from Decoto or Melrose (Oakland), Cal.
②	Maximum weight of each vehicle not to exceed 2,600 lbs.
③	Rate does not apply on shipments covered by rate prefixed ②.

ECONOMIC GROWTH

Population (000)	1940	1950	1960	% Increase 1940-1960	1970*	% Increase 1960-1970
United States	131,954	151,234	180,004	36%	205,246	14%
Pacific Coast	9,733	14,486	20,339	109	26,100	28
California	6,907	10,586	15,717	128	20,696	32
Oregon	1,090	1,521	1,769	62	2,153	22
Washington	1,736	2,379	2,853	64	3,251	14

*Stanford Research Institute, "Population Trends in the United States Through 1975", March, 1960

Value Added by Manufacturing (millions)	1940	1950	1958	% Increase 1940-1958
United States	$24,487	$74,426	$140,706	475%
Pacific Coast	1,548	5,544	15,260	886
California	1,123	3,995	11,913	961
Oregon	157	675	1,210	671
Washington	268	874	2,137	697

Farm Marketing Cash Receipts (millions)	1940	1950	1959	% Increase 1940-1959
United States	$8,382	$28,512	$33,459	301%
Pacific Coast	907	3,195	3,997	341
California	651	2,297	3,001	361
Oregon	112	390	429	283
Washington	144	508	567	294

Personal Income (millions)	1940	1950	1958	% Increase 1940-1958	1970*	% Increase 1958-1970
United States	$78,522	$225,473	$357,482	355%	$525,512	47%
Pacific Coast	7,668	26,064	46,230	503	75,958	64
California	5,839	19,627	36,692	528	62,931	72
Oregon	677	2,451	3,556	425	4,851	36
Washington	1,152	3,986	5,982	419	8,176	37

*Stanford Research Institute, "Income Trends in the United States Through 1975", December - 1957. Source gives projections in 1947 dollars. The projections shown here are in terms of 1959 dollars.

ECONOMIC GROWTH

Retail Sales (millions)	1939	1948	1958	% Increase 1939-1958
United States	$42,042	$128,849	$200,370	377%
Pacific Coast	4,299	14,740	25,505	493
California	3,188	10,950	19,948	526
Oregon	442	1,586	2,138	384
Washington	669	2,204	3,419	411

NOTES: All figures rounded, so totals may not add.
Sources: Population from U. S. Department of Commerce, Bureau of the Census, reports for the states and years indicated; Value Added by Manufacturing from Bureau of the Census reports; Farm Cash Receipts from U. S. Department of Agriculture, Marketing Service, "The Farm Income Situation"; Personal Income from U. S. Department of Commerce, Office of Business Economics, "Survey of Current Business", August, 1959; Retail Sales from Bureau of the Census, reports for years and states indicated.

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the best copy available to publisher.

PRODUCTION

California Production as a Share of the United States

	1940	1950	1958
Value Added by Manufacturing	4.6%	5.4%	8.5%
Farm Cash Receipts	7.8	8.1	9.1*

*For 1959.

	1940	1950	1959	Percent Increase 1940-1959	Percent of Total U.S. in 1959
Lumber (million board feet)					
Oregon	5,202	8,520	7,546	45%	
Washington	4,542	3,814	3,456	-24	
TOTAL	9,744	12,334	11,002	13%	30%
Wood Pulp (000 tons)			(1958)		
Oregon	288	527	970	237%	
Washington	1,126	1,871	2,592	130	
TOTAL	1,414	2,398	3,562	152%	16%
Wheat (million bushels)					
Oregon	17.0	23.7	28.5	68%	
Washington	44.2	69.7	73.3	65	
TOTAL	61.2	93.4	101.8	66%	9%
Apples (000 tons)					
Oregon	76	70	53	-30%	
Washington	581	828	553	- 5	
TOTAL	657	898	606	- 8%	24%
Aluminum (000 tons)					
Oregon	-	7.6	139.0		
Washington	5.0	267.0	334.0		
TOTAL	5.0	274.6	473.0		24%

NOTES: Some figures rounded so totals may not add. Sources: Lumber production from U. S. Department of Commerce, Bureau of the Census, "Facts for Industry" and U. S. Department of Agriculture, "Lumber Production in the U. S., 1799-1946"; wood pulp from "Facts for Industry" series; wheat and apple production from U. S. Department of Agriculture, Marketing Service, "Annual Summaries - Crop Production"; aluminum production from Stanford Research Institute, Western Resources Handbook and U. S. Department of Interior, Bureau of Mines, "Minerals Yearbook".

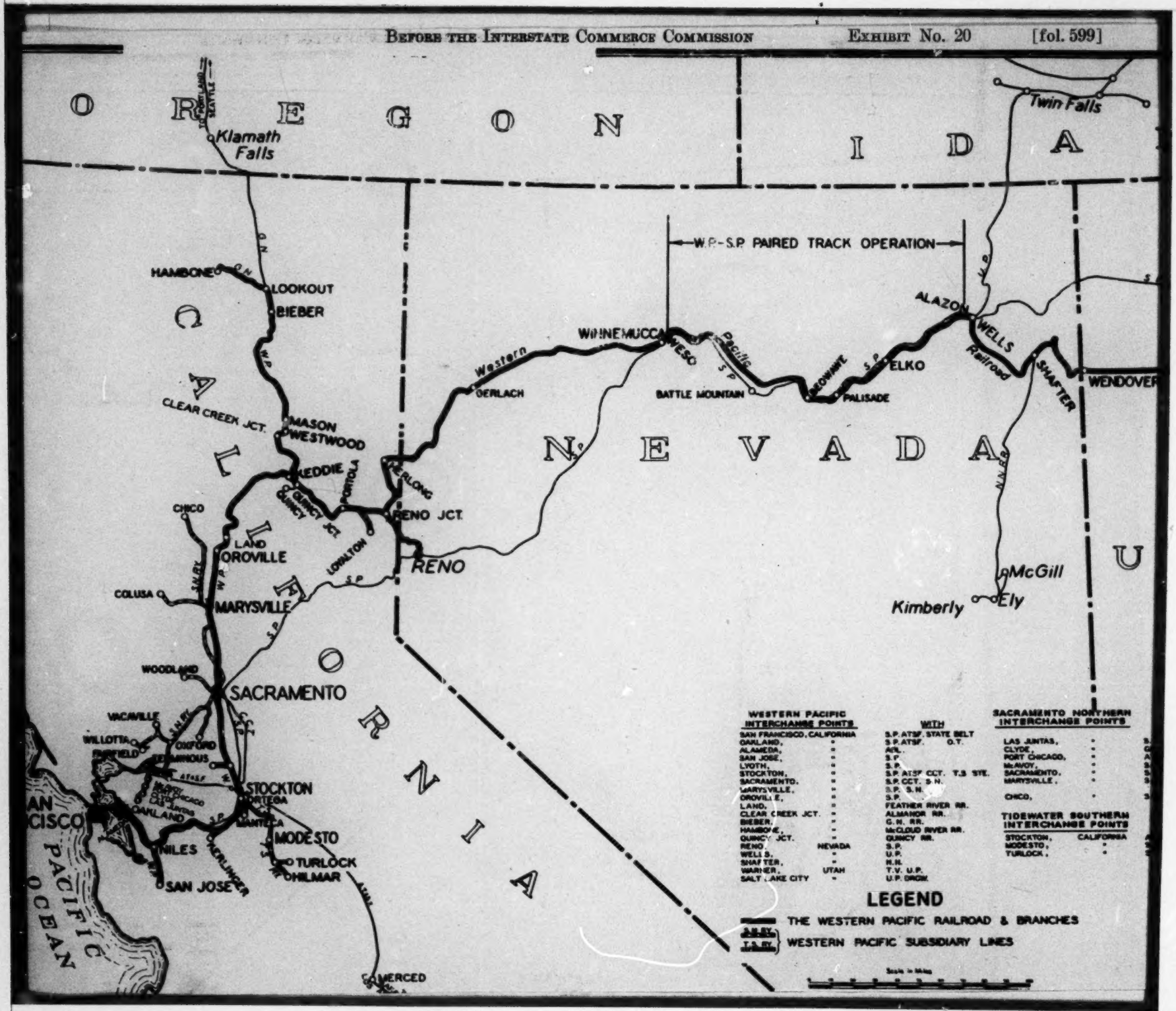
THE WESTERN PACIFIC TRANSPORTATION PLANT

Road Improvement	1950	1955	1960
Rail:			
% Track miles in rail 112 lb. or heavier	51%	67%	71%
% Track miles in rail 115 lb. or heavier	12	35	45
Ties:			
% Treated as a share of total	54	77	93
% Untreated as a share of total	46	23	7
	100	100	100
Ballast: Percent by type in mainlines:			
Slag	-	15	27
Crushed Rock	28	33	35
Other /1	72	52	38
	100	100	100
Bridges: Percent of total lineal feet by classification:			
Concrete	/1	3	4
Steel	48	47	49
Ballast Deck /2	-	8	19
Treated Timber	36	32	21
Untreated Timber	16	10	7
All Other	8	-	-
	100	100	100

/1 Included in All Other
/2 Includes timber and concrete.

Equipment	1954	1957	1960	% Increase 1954-1960
Motive Power: 000 lbs. tractive effort	9,281	9,844	10,259	11%
Freight Car Fleet: Total Cars /1	4,951	5,384/2	6,056/2	22
Total Special Equipped	199	667	1,852	
Interior Equipped /3	78	401	1,159	
Other Equipped /4	121	266	693	
% of Total fleet special equipped	4%	12%	31%	

/1 - Excludes refrigerator cars owned but leased to other operators. Includes Sacramento Northern and Tidewater Southern fleets.
/2 - Includes leased cars in WP service (10 in 1957 and 30 in 1960.)
/3 - Includes DF, Compartmentizer, auto loader and transmission rack box cars.
/4 - Includes insulated box, multi-level auto flat, TOFC flat, auto and truck frame flat, bulkhead flat, steel coil gondola, woodchip gondola and hoppers and covered hoppers, including airslide.



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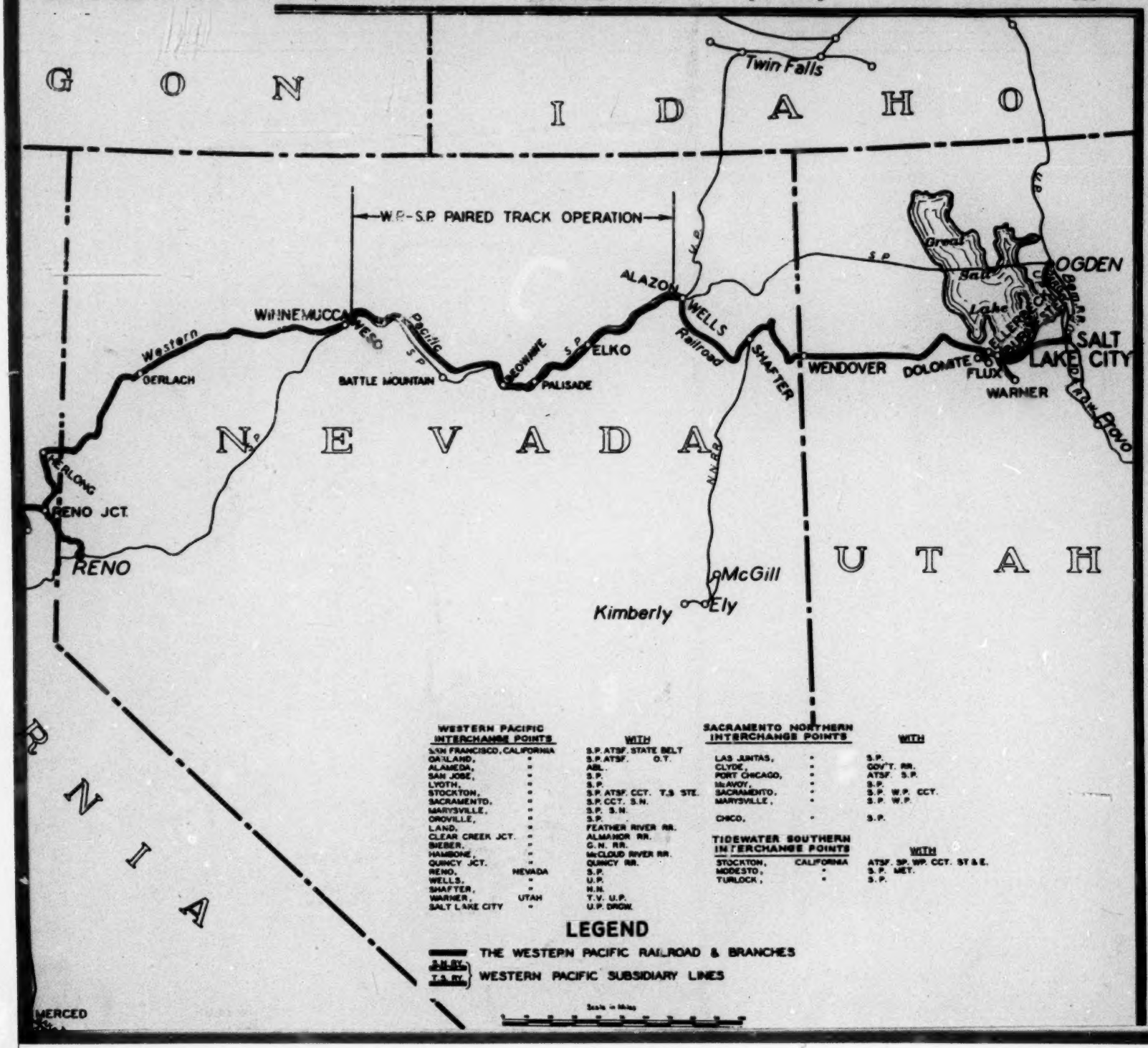

WESTERN PACIFIC INTERCHANGE POINTS		WITH
SAN FRANCISCO, CALIFORNIA		S.P. ATSF. STATE BELT
OAKLAND,	"	S.P. ATSF. O.T.
ALAMEDA,	"	ABL.
SAN JOSE,	"	S.P.
LYOTH,	"	S.P.
STOCKTON,	"	S.P. ATSF. CCT. T.S STE.
SACRAMENTO,	"	S.P. CCT. S.N.
MARYSVILLE,	"	S.P. S.N.
OROVILLE,	"	S.P.
LAND,	"	FEATHER RIVER RR.
CLEAR CREEK JCT.	"	ALMANOR RR.
SWEIER,	"	G. N. RR.
HAMBONE,	"	McCLOUD RIVER RR.
QUINCY JCT.	"	QUINCY RR.
RENO,	NEVADA	S.P.
WELLS,	"	U.P.
SHAFTER,	"	N.N.
WARNER,	UTAH	T.V. U.P.
SALT LAKE CITY	"	U.P. DROM

SACRAMENTO NORTHERN INTERCHANGE POINTS		WITH
LAS JUNTAS,	"	S.P.
CLYDE,	"	GOV'T. RR.
PORT CHICAGO,	"	ATSF. S.P.
McAVOY,	"	S.P.
SACRAMENTO,	"	S.P. W.P. CCT.
MARYSVILLE,	"	S.P. W.P.
CHICO,	"	S.P.

TIDEWATER SOUTHERN INTERCHANGE POINTS		WITH
STOCKTON,	CALIFORNIA	ATSF. SP. WP. CCT. ST & E.
MODESTO,	"	S.P. MET.
TURLOCK,	"	S.P.

LEGEND

THE WESTERN PACIFIC RAILROAD & BRANCHES

WESTERN PACIFIC SUBSIDIARY LINES

	Oakland-Stockton	Stockton-Oroville	Oroville-Portola	Keddie-Bieber	Section Totals	System Totals
1943-East	264,506,634	587,033,312	596,118,349	239,450,369	4,117,505,767	
-West	389,357,800	859,298,837	839,227,646	342,512,820		
Total	653,864,434	1,446,332,149	1,435,345,995	581,963,189		10,283,416,000
1944-East	268,970,567	572,564,266	566,439,016	234,048,876	4,285,518,383	
-West	462,312,838	931,653,312	923,129,082	326,800,426		
Total	730,883,405	1,504,217,578	1,489,568,098	560,849,302		10,519,239,000
1945-East	285,529,896	624,529,813	637,565,012	282,751,504	4,491,518,640	
-West	451,709,602	909,892,891	901,797,982	347,741,940		
Total	737,239,498	1,534,422,704	1,539,362,994	630,493,444		10,901,858,000
1946-East	206,217,240	517,189,900	527,224,778	242,787,112	3,339,265,069	
-West	280,362,560	640,220,101	610,396,703	314,866,675		
Total	486,579,800	1,157,410,001	1,137,621,481	557,653,787		7,757,214,000
1958-East	191,333,711	465,012,331	490,618,604	225,577,891	3,167,808,606	
-West	260,833,545	630,352,893	654,526,272	249,553,359		
Total	452,167,256	1,095,365,224	1,145,144,876	475,131,250		8,033,190,000
1959-East	208,693,224	480,081,333	505,987,775	233,005,969	3,274,711,434	
-West	286,863,243	638,848,571	657,073,767	274,157,552		
Total	495,556,467	1,118,929,904	1,163,061,542	507,163,521		8,240,744,000
1960-East	202,686,167	475,722,697	502,185,973	238,968,977	3,276,791,788	
-West	268,804,856	645,715,146	662,190,862	280,517,590		
Total	471,491,023	1,121,437,803	1,164,376,435	519,486,527		8,312,144,000

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 23

NORTHBOUND

Southern Pacific Schedules

	MCP (Daily)		Starpacer (Daily except Sun. & M	
Lv. Los Angeles	8:00 am	Day 1	12:01 am	Day 1
Ar. Portland	11:30 am	Day 3	6:30 am	Day 2

	NP	GN	UP	
Lv. Portland	3:30 pm	3:15 pm	3:00 pm	Day 3
Ar. Seattle	10:30 pm	10:00 pm	8:00 pm	Day 3

	SME (Daily)		PCE (Daily except Fri. Sun. & M	
Lv. Oakland	11:15 pm	Day 0	10:35 pm	Day 0
Ar. Portland	5:00 pm	Day 2	6:50 pm	Day 1

	NP	GN	UP	
Lv. Portland	10:30 pm	10:15 pm	8:30 pm	Day 1
Ar. Seattle	5:30 am	6:00 am	3:30 am	Day 2

INSIDE GATEWAY SCHEDULES

	SWG (Daily)		EXP - Mon., Tues. and Friday	
Lv. Los Angeles	3:00 am	Day 1	10:00 pm	Day 0
Ar. Vancouver	3:00 pm	Day 3	7:35 pm	Day 2
Ar. Portland	5:30 pm	Day 3	10:30 pm	Day 2
Ar. Seattle	10:00 pm	Day 3	1:30 am	Day 3

	SWG (Daily)		EXP - Tuesday, Wednesday and Sat	
Lv. Oakland	9:00 pm	Day 0	7:00 am	Day 1
Ar. Vancouver	3:00 pm	Day 2	7:35 pm	Day 2
Ar. Portland	5:30 pm	Day 2	10:30 pm	Day 2
Ar. Seattle	10:00 pm	Day 2	1:30 am	Day 3

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT NO. 24

SOUTHBOUND

Southern Pacific Schedules

	Adv. FML (Daily)						FML (Daily)	
	GN		UP		NP		GN	
Lv. Seattle	2:00 am	Day 1	11:00 pm	Day 0	1:00 am	Day 1	1:00 pm	Day 1
Lv. Portland	9:30 am	Day 1	5:30 am	Day 1	8:30 am	Day 1	7:30 pm	Day 1
Lv. Portland			5:00 pm	Day 1			5:00 am	Day 2
Lv. Oakland			8:45 pm	Day 2			4:45 pm	Day 3
Lv. Los Angeles			11:30 am	Day 3			4:00 pm	Day 4

Inside Gateway

	GWS (Daily)		CAL (Daily)	
Lv. Seattle	2:00 am	Day 1	1:00 pm	Day 1
Lv. Portland	5:00 am	Day 1	4:30 pm	Day 1
Lv. Vancouver	11:00 am	Day 1	8:00 pm	Day 1
Ar. Oakland	8:00 pm	Day 3	8:00 pm	Day 3
Ar. Los Angeles	1:00 pm	Day 4	1:00 pm	Day 4

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 25

COMPARISON BETWEEN LOWEST "THROUGH" RATE ON FIBREBOARD BOXES, KD FLAT FROM STOCKTON AND ANTIOCH, CALIF. TO SELECTED STATIONS IN WASHINGTON

- AND -

LOWEST "COMBINATION" RATE APPLICABLE VIA THE BIESER ROUTE

COLUMN	1	2	3	4	5	6
TO	LOWEST PRESENT "THROUGH" 1/ RATE		LOWEST "COMBINATION" RATE APPLICABLE VIA BIESER ROUTE (RAISED ON 1/ RATE OF 60 CENTS, MINIMUM 50,000 POUNDS FROM ORIGIN TO PORTLAND, ORE.			
			RATE FROM PORTLAND, ORE. TO DESTINATION		"COMBINATION" RATE	
	RATE	MINIMUM WEIGHT (POUNDS)	RATE	MINIMUM WEIGHT (POUNDS)	RATE	MINIMUM WEIGHT (POUNDS)
BELLEVUE, WASH.	75	60,000	2/ 32½	50,000	101½	50,000
BREMERTON, "	85½	60,000	3/ 60½	30,000	129½	50,000
OLYMPIA, "	75	60,000	4/ 32½	50,000	101½	50,000
PROSSER, "	95	50,000	5/ 43½	50,000	112½	50,000
PULLMAN, "	105	50,000	6/ 48½	50,000	117½	50,000
RICHLAND, "	95	50,000	7/ 43½	50,000	112½	50,000
SHELTON, "	75	60,000	8/ 32½	50,000	101½	50,000
TOPPENISH, "	95	50,000	9/ 43½	50,000	112½	50,000
WALLA WALLA, "	101	45,000	10/ 43½	50,000	112½	50,000
YAKIMA, "	95	50,000	11/ 43½	50,000	112½	50,000

1/ ITEM 8840-J OF PACIFIC SOUTHCOAST FREIGHT BUREAU TARIFF 1-S, ICC NO. 1352.
2/ ITEM 965
3/ ITEM 920
4/ ITEM 930
5/ ITEM 1555
6/ ITEM 1660
7/ ITEM 1540
8/ ITEM 915
} OF NORTH PACIFIC COAST FREIGHT BUREAU FREIGHT TARIFF 80-M, ICC NO. 1020

[fol. 607]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 28

NORTHBOUND FREIGHT TRAIN SCHEDULES
SOUTHERN PACIFIC - UNION PACIFIC AND BIEBER ROUTE
AND ELAPSED TIMES

	STARPACER	NCP	OVE-RPS	PCE	VIW-NCP
v. Los Angeles	12:01A(1)	8:10A(1)	11:00P(0)		9:00P(0)
v. San Francisco					
v. Oakland			11:15P(0)	10:35P(0)	
r. Brooklyn	6:30A(2)	11:30A(3)	5:00P(2)	6:50P(1)	11:30A(3)
os Angeles to Brooklyn	30'30"	51'30"			62'30"
an Francisco to Brooklyn			42'00"		
akland to Brooklyn				20'15"	
v. Albina UP #681	2:15P(2)	UP #691 8:30P(3)	UP #691 8:30P(2)	UP #681 2:15P(2)	UP #691 8:30P(3)
r. Seattle UP #681	8:00P(2)	UP #691 3:30A(4)	UP #691 3:30A(3)	UP #681 8:00P(2)	UP #691 3:30A(4)
v. Albina UP #198-CBX	11:00P(2)	UP #198-CBX 11:00P(3)	UP #198-CBK 11:00P(2)	UP #198-CBK 11:00P(1)	UP #198-CBK 11:00P(3)
r. Spokane UP #298	8:00P(3)	UP #298 8:00P(4)	UP #298 8:00P(3)	UP #298 8:00P(2)	UP #298 8:00P(4)
r. Baker UP #IDS	8:00A(4)	UP #IDS 8:00A(5)	UP #IDS 8:00A(4)	UP #IDS 8:00A(3)	UP #IDS 8:00A(5)
os Angeles to Seattle	44'00"	67'30"			78'00"
an Francisco to Seattle			52'30"		
akland to Seattle			52'15"	45'25"	
os Angeles to Spokane	68'00"	84'00"			95'00"
an Francisco to Spokane			69'00"		
akland to Spokane			68'45"	45'25"	
os Angeles to Baker	80'00"	96'00"			107'00"
an Francisco to Baker			81'00"		
akland to Baker			80'45"	57'25"	

NORTHBOUND FREIGHT TRAIN SCHEDULES
SOUTHERN PACIFIC - UNION PACIFIC AND BIEBER ROUTE
AND ELAPSED TIMES

	"Bieber" Route SWG		"Bieber" Route EXP		"Bieber" Route NCK	
	Direct	Via Portland Union Pacific	Direct	Via Portland Union Pacific	Direct	No Connection Portland
Lv. Los Angeles	3:00A(1)	3:00A(1)	10:00P(0)	10:00P(0)	5:30A(1)	
Lv. San Francisco	7:00P(1)	7:00P(1)	4:00A(1)	4:00A(1)	11:00P(1)	
Lv. Oakland	10:00P(1)	10:00P(1)	7:00A(1)	7:00A(1)	12:01A(2)	
Ar. Portland	5:30P(3)	5:30P(3)	10:30P(2)	10:30P(2)		
Los Angeles to Portland	62'30"	62'30"	48'30"	48'30"		
San Francisco to Portland	46'30"	46'30"	42'30"	42'30"		
Oakland to Portland	43'30"	43'30	39'30"	39'30"		
Lv. Albina		UP #681 2:15P(4)		UP #681 2:15P(3)		
Ar. Seattle	10:00P(3)	UP #681 8:00P(4)	1:30A(3)	UP #681 8:00P(4)		
Lv. Albina		UP #198* 11:00P(4)		UP #198* 11:00P(3)		
Ar. Spokane	10:00A(4)	UP #298 8:00P(5)	10:00A(3)	UP #298 8:00P(4)	10:00A(5)	
Ar. Baker		UP #IDS 8:00A(6)		UP #IDS 8:00A(5)		
Los Angeles to Seattle	67'00"	89'00"	51'30"	70'00"		
San Francisco to Seattle	51'00"	73'00"	45'30"	64'00"		
Oakland to Seattle	48'00"	70'00"	42'30"	61'00"		
Los Angeles to Spokane	79'00"	113'00"	60'00"	94'00"	100'30"	
San Francisco to Spokane	63'00"	97'00"	54'00"	88'00"	83'00"	
Oakland to Spokane	60'00"	94'00"	51'00"	85'00"	81'59"	
Los Angeles to Baker		125'00"		106'00"		
San Francisco to Baker		109'00"		100'00"		
Oakland to Baker		106'00"		97'00"		

* - CBK

SOUTHBOUND FREIGHT TRAIN SCHEDULES
SOUTHERN PACIFIC - UNION PACIFIC AND BIEBER ROUTE
AND ELAPSED TIMES

	UNION PACIFIC		UNION PACIFIC		UNION PACIFIC		UNIC
	Drag And #151	#151	#690	#692	Drag And #151	#151	#690
Lv. Baker	6:00P(0)				6:00P(0)		
Ar. Albina	11:00P(1)				11:00P(1)		
Lv. Spokane		11:00P(0)				11:00P(0)	
Ar. Albina		11:00P(1)				11:00P(1)	
Lv. Seattle			11:00P(0)	4:00A(1)			11:00P
Ar. Albina			5:30A(1)	1:00P(1)			5:30A

SOUTHERN PACIFIC

	BAS	PNL	PCW	ADV. PNL	ADV. SNW-CS	TFC SFC	CAL	
Lv. Portland	5:00A(1)	5:00A(1)	8:50A(1)	5:00P(1)	5:00P(1)	12:01A(1)	4:30P(1)	
Ar. Oakland	4:45P(2)		5:05A(2)		8:45P(2)		8:00P(3)	
Ar. San Francisco	10:30P(2)				11:30P(2)			
Ar. Los Angeles		4:00P(3)		11:30A(3)		6:30A(2)	1:00P(4)	
ELAPSED TIME:								
Baker to Oakland	70'45"		59'05"		74'45"		74'00"	74'00"
Baker to San Francisco	76'30"				77'30"			
Baker to Los Angeles		94'00"		89'30"		60'30"	91'00"	91'00"
Spokane to Oakland	65'45"		54'05"		69'45"			
Spokane to San Francisco	71'30"				72'30"			
Spokane to Los Angeles		89'00"		84'30"		55'30"		
Seattle to Oakland			42'05"		45'45"			88'0
Seattle to San Francisco					48'30"			91'0
Seattle to Los Angeles				72'30"				113'0
Seattle to Oakland					40'20"			
Seattle to San Francisco					43'30"			
Seattle to Los Angeles				55'30"		50'30"		

OVERSIZE PAGE SEE NEXT FRAME
FOR REMAINDER OF PAGE

[fol. 609]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 29

470

SOUTHBOUND FREIGHT TRAIN SCHEDULES
SOUTHERN PACIFIC - UNION PACIFIC AND BIEBER ROUTE
AND ELAPSED TIMES

UNION PACIFIC		UNION PACIFIC		UNION PACIFIC		BIEBER ROUTE		BIEBER ROUTE	
#690	#692	Drag And #151	#151	#690	#692	CAL	GWS	SP-OCM	GN-GWS
		6:00P(0) 11:00P(1)							
			11:00P(0) 11:00P(1)					6:50A(1)	6:50A(1)
11:00P(0) 5:30A(1)	4:00A(1) 1:00P(1)			11:00P(0) 5:30A(1)	4:00A(1) 1:00P(1)	1:00P(0)	2:00A(1)		

C I F I C

CW	ADV. PNL	ADV. SPM-CS	TPC SPC	CAL	GWS				
0A(1) 5A(2)	5:00P(1)	5:00P(1) 8:45P(2) 11:30P(2)	12:01A(1)	4:30P(1) 8:00P(3)	5:00A(2) 3:00P(4) 6:00P(4) 4:00P(5)	4:00P(2) 7:00P(2) 1:00P(3)	3:00P(3) 6:00P(3) 4:00P(4)	8:00P(3) 9:00P(3) 4:00P(4)	3:00P(3) 6:00P(3) 4:00P(4)
	11:30A(3)		6:30A(2)	1:00P(4)					
05"		74'45" 77'30"		74'00"	74'00"				
	89'30"		60'30"	91'00"	91'00"				
05"		69'45" 72'30"						61'10" 62'10"	56'10" 59'10"
	84'30"		55'30"					81'10"	81'10"
05"		45'45" 48'30"			88'00" 91'00"	51'00" 54'00"	61'00" 64'00"		
	72'30"				113'00"	72'00"	86'00"		
		40'20" 43'30"							
	55'30"		50'30"						

[fol. 612]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 32

Exhibit Showing Comparison of Railroad Distance via Existing Joint Rate Routes with Route Sought in This Proceeding and also Routes Via Oregon Trunk-Spokane, Portland and Seattle Railway Companies between Representative Points on the Northern Pacific Railway Company and San Francisco and Los Angeles, California.

From	To	Via	Miles	Total
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Hoquiam, Wash.	NP	150	869
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Hoquiam, Wash.	NP	150	1038
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Hoquiam, Wash.	NP	140	1018
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Shelton, Wash.	NP	151	870
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Shelton, Wash.	NP	151	1039
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Shelton, Wash.	NP	141	1019
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Seattle, Wash.	NP	182	901
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Seattle, Wash.	NP	182	1070
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Seattle, Wash.	NP	172	1050
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Bremerton, Wash.	NP	187	906
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Bremerton, Wash.	NP	187	1075
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Bremerton, Wash.	NP	177	1055

From	To	Via	Miles	Total
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Everett, Wash.	NP	217	936
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Everett, Wash.	NP	217	1105
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Everett, Wash.	NP	207	1085
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Bellingham, Wash.	NP	291	1010
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Bellingham, Wash.	NP	291	1179
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Bellingham, Wash.	NP	281	1159
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Yakima, Wash.	NP	300	1019
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pasco, Wash.	SR&S	231	
Pasco, Wash.	Yakima, Wash.	NP	88	1038
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Yakima, Wash.	NP	300	1188
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	
Pasco, Wash.	Yakima, Wash.	NP	88	995
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pasco, Wash.	NP	387	1106
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pasco, Wash.	SR&S	231	950
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Pasco, Wash.	NP	387	1275

From	To	Via	Miles	Tot
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	9
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Walla Walla, Wash.	NP	451	11
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pasco, Wash.	SR&S	231	
Pasco, Wash.	Walla Walla, Wash.	NP	64	10
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Walla Walla, Wash.	NP	451	13
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	
Pasco, Wash.	Walla Walla, Wash.	NP	64	9
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pendleton, Ore.	NP	443	11
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pasco, Wash.	SR&S	231	
Pasco, Wash.	Pendleton, Ore.	NP	56	10
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Pendleton, Ore.	NP	443	13
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	
Pasco, Wash.	Pendleton, Ore.	NP	56	9
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Athena, Ore.	NP	435	11
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pasco, Wash.	SR&S	231	
Pasco, Wash.	Athena, Ore.	NP	48	9
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Athena, Ore.	NP	435	13

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From	To	Via	Miles	Total
n Francisco, Cal.	Bieber, Cal.	WP	394	
ieber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Pasco, Wash.	SP&S	125	
sco, Wash.	Athena, Ore.	NP	48	955
n Francisco, Cal.	Portland, Ore.	SP	719	
rtland, Ore.	Spokane, Wash.	NP	533	1252
n Francisco, Cal.	Portland, Ore.	SP	719	
rtland, Ore.	Pasco, Wash.	SP&S	231	
sco, Wash.	Spokane, Wash.	NP	146	1096
n Francisco, Cal.	Bieber, Cal.	WP	394	
ieber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Spokane, Wash.	NP	533	1421
n Francisco, Cal.	Bieber, Cal.	WP	394	
ieber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Pasco, Wash.	SP&S	125	
sco, Wash.	Spokane, Wash.	NP	146	1053
n Francisco, Cal.	Portland, Ore.	SP	719	
rtland, Ore.	Riparia, Wash.	NP	454	
iparia, Wash.	Lewiston, Ida.	CamP.	72	1245
n Francisco, Cal.	Portland, Ore.	SP	719	
rtland, Ore.	Pasco, Wash.	SP&S	231	
sco, Wash.	Riparia, Wash.	NP	67	
iparia, Wash.	Lewiston, Ida.	CamP.	72	1089
n Francisco, Cal.	Bieber, Cal.	WP	394	
ieber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Riparia, Wash.	NP	454	
iparia, Wash.	Lewiston, Ida.	CamP.	72	1414
n Francisco, Cal.	Bieber, Cal.	WP	394	
ieber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Pasco, Wash.	SP&S	125	
sco, Wash.	Riparia, Wash.	NP	67	
iparia, Wash.	Lewiston, Ida.	CamP.	72	1046

From	To	Via	Miles	Total
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Hoquiam, Wash.	NP	150	1242
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Hoquiam, Wash.	NP	150	1460
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Hoquiam, Wash.	NP	140	1440
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Shelton, Wash.	NP	151	1243
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Shelton, Wash.	NP	151	1461
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Shelton, Wash.	NP	141	1441
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Seattle, Wash.	NP	182	1274
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Seattle, Wash.	NP	182	1492
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Seattle, Wash.	NP	172	1476
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Bremerton, Wash.	NP	187	1279
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Bremerton, Wash.	NP	187	1497

From	To	Via	Miles	Total
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
ockton, Cal.	Bieber, Cal.	WP	300	
eber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Vancouver, Wash.	SP&S	96	
ncouver, Wash.	Bremerton, Wash.	NP	177	1477
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Everett, Wash.	NP	217	1309
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
ockton, Cal.	Bieber, Cal.	WP	300	
eber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Everett, Wash.	NP	217	1527
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
ockton, Cal.	Bieber, Cal.	WP	300	
eber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Vancouver, Wash.	SP&S	96	
ncouver, Wash.	Everett, Wash.	NP	207	1507
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Bellingham, Wash.	NP	291	1383
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
ockton, Cal.	Bieber, Cal.	WP	300	
eber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Bellingham, Wash.	NP	291	1601
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
ockton, Cal.	Bieber, Cal.	WP	300	
eber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Vancouver, Wash.	SP&S	96	
ncouver, Wash.	Bellingham, Wash.	NP	281	1581
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Yakima, Wash.	NP	300	1392
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Pasco, Wash.	SP&S	231	
sco, Wash.	Yakima, Wash.	NP	88	1411
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
ockton, Cal.	Bieber, Cal.	WP	300	
eber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Yakima, Wash.	NP	300	1610

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From	To	Via	Miles	Total
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	
Pasco, Wash.	Yakima, Wash.	NP	88	1417
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Pasco, Wash.	NP	387	1479
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Pasco, Wash.	SR&S	231	1323
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Pasco, Wash.	NP	387	1697
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	1329
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Walla Walla, Wash.	NP	451	1543
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Pasco, Wash.	SR&S	231	
Pasco, Wash.	Walla Walla, Wash.	NP	64	1387
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Walla Walla, Wash.	NP	451	1761
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	
Pasco, Wash.	Walla Walla, Wash.	NP	64	1393
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Pendleton, Ore.	NP	443	1535
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Pasco, Wash.	SR&S	231	
Pasco, Wash.	Pendleton, Ore.	NP	56	1379

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From	To	Via	Miles	Total
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
tockton, Cal.	Bieber, Cal.	WP	300	
ieber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Pendleton, Ore.	NP	443	1753
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
tockton, Cal.	Bieber, Cal.	WP	300	
ieber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Pasco, Wash.	SP&S	125	
sco, Wash.	Pendleton, Ore.	NP	56	1385
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Athena, Ore.	NP	435	1527
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Pasco, Wash.	SP&S	231	
sco, Wash.	Athena, Ore.	NP	48	1371
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
tockton, Cal.	Bieber, Cal.	WP	300	
ieber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Athena, Ore.	NP	435	1745
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
tockton, Cal.	Bieber, Cal.	WP	300	
ieber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Pasco, Wash.	SP&S	125	
sco, Wash.	Athena, Ore.	NP	48	1377
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Spokane, Wash.	NP	533	1625
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Pasco, Wash.	SP&S	231	
sco, Wash.	Spokane, Wash.	NP	146	1469
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
tockton, Cal.	Bieber, Cal.	WP	300	
ieber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Spokane, Wash.	NP	533	1843
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
tockton, Cal.	Bieber, Cal.	WP	300	
ieber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Pasco, Wash.	SP&S	125	
sco, Wash.	Spokane, Wash.	NP	146	1475

Los Angeles, Cal.	Portland, Ore.	SP	1092
Portland, Ore.	Riparia, Wash.	NP	454
Riparia, Wash.	Lewiston, Ida.	Cam.P.	72
Los Angeles, Cal.	Portland, Ore.	SP	1092
Portland, Ore.	Pasco, Wash.	SR&S	231
Pasco, Wash.	Riparia, Wash.	NP	67
Riparia, Wash.	Lewiston, Ida.	Cam.P.	72
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516
Stockton, Cal.	Bieber, Cal.	WP	300
Bieber, Cal.	Portland, Ore.	GN	496
Portland, Ore.	Riparia, Wash.	NP	454
Riparia, Wash.	Lewiston, Ida.	Cam.P.	72
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516
Stockton, Cal.	Bieber, Cal.	WP	300
Bieber, Cal.	Bend, Ore.	GN	236
Bend, Ore.	Wishram, Wash.	OT	152
Wishram, Wash.	Pasco, Wash.	SR&S	125
Pasco, Wash.	Riparia, Wash.	NP	67
Riparia, Wash.	Lewiston, Ida.	Cam.P.	72

Explanation of Abbreviations

AT&SF	Atchison, Topeka & Santa Fe Railway Company
Cal.	California
Cam.P.	Camas Prairie Railroad Company
GN	Great Northern Railway Company
Ida.	Idaho
NP	Northern Pacific Railway Company
Ore.	Oregon
OT	Oregon Trunk Railway Company
SP	Southern Pacific Company
SR&S	Spokane, Portland & Seattle Railway Company
Wash.	Washington
WP	Western Pacific Railroad Company

Distance Table Authority

AT&SF	9900-D	ICC 14399
Cam.P.	209-I	ICC F-232
GN	400-C	ICC A-6710
NP	1500-I	ICC 9759
OT	97-K	ICC 732
SP	420-D	ICC 4687
SR&S	685-K	ICC 732
WP	39-G	ICC 490

[fol. 622]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 33

TRANSPORTATION CONDITIONS
OF
SOUTHERN PACIFIC ROUTES
COMPARED WITH
WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA
BETWEEN
PORTLAND, OREGON
AND
STOCKTON, CALIFORNIA, SAN FRANCISCO, CALIFORNIA,
AND LOS ANGELES, CALIFORNIA

Sheet 1 of 17 sheets

SUMMARY OF TRANSPORTATION CONDITIONS
SOUTHERN PACIFIC ROUTES COMPARED WITH WESTERN PACIFIC - BIEBER ROUTE

Between Portland, Oregon and Stockton, California	Railroad	Number of Interchanges	Engine District	Road Miles	Total Degrees of Curvature	Feet of Rise	Total Equivalent Rise In Feet	Maximum Equivalent Rise in One Mile
Portland, Oregon to Stockton, California	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
SP Route via Roseville, California	SP	1	7	702	33,407	7,294	16,831	112
WP Route via Bieber, California	GN-WP	2	7	788	44,212	7,949	19,123	112
Stockton, California to Portland, Oregon								
SP Route via Roseville, California	SP	1	7	702	33,404	7,334	17,131	131
WP Route via Bieber, California	WP-GN	2	7	788	44,212	7,891	19,083	133
Between Portland, Oregon and San Francisco, California								
Portland, Oregon to San Francisco, California								
SP Route via Roseville, California - Stockton, California	SP	1	8	801	38,031	8,126	18,961	112
SP Route via Davis, Calif.-Oakland, Calif.	SP	1	7 + Truck	732	34,495	7,400	17,257	112
WP Route via Bieber, Calif. (WP Termination)	GN-WP	2	8 + Barge	880	47,094	8,793	21,038	112
WP Route via Bieber, Calif. (ATSF Term.)	GN-WP-ATSF	3	8 + Barge	866	45,933	8,406	20,541	112
San Francisco, Cal. to Portland, Oregon								
SP Route via Stockton, Cal. - Roseville, Cal.	SP	1	8	801	38,028	8,165	19,381	131
SP Route via Oakland, Cal. - Davis, Calif.	SP	1	7 + Truck	732	34,425	7,449	17,557	131
WP Route via Bieber, Cal. (WP Origination)	WP-GN	2	8 + Barge	880	47,094	8,753	21,121	133
WP Route via Bieber, Cal. (ATSF Orig.)	ATSF-WP-GN	3	8 + Barge	866	45,933	8,367	20,539	133
Between Portland, Oregon and Los Angeles, Calif.								
Portland, Oregon to Los Angeles, California								
SP Route via Roseville, Cal. - Stockton, Cal.	SP	1	9	1,098	47,616	12,843	27,903	145
WP Route via Bieber, California	GN-WP-ATSF	3	12	1,317	58,722	14,542	32,902	145

TRANSPORTATION CONDITIONS - PORTLAND, OREGON TO STOCKTON, CALIFORNIA

SOUTHERN PACIFIC ROUTE VIA ROSEVILLE, CALIFORNIA

	From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1.	Portland, Oregon	Eugene, Oregon	SP	1	1	121	2,369	774	2,566	74
2.	Eugene, Oregon	Crescent Lake, Oregon	SP	-	1	98	10,130	4,438	6,333	112
3.	Crescent Lake, Oregon	Klamath Falls, Oregon	SP	-	1	99	2,671	308	1,495	45
4.	Klamath Falls, Oregon	Dunsmuir, California	SP	-	1	109	8,683	1,061	2,377	69
5.	Dunsmuir, California	Gerber, California	SP	-	1	107	8,437	364	1,375	56
6.	Gerber, California	Roseville, California	SP	-	1	107	811	267	1,757	38
7.	Roseville, California	Stockton, California	SP	-	1 1/	61	306	82	928	25
8.	Total - Portland - Stockton			1	7	702	33,407	7,294	16,831	112

SP - Southern Pacific

Note: 1/ - Engine District - Roseville, California to Tracy, California or Roseville, California to Fresno, California

Sheet 3 of 17 sheets

TRANSPORTATION CONDITIONS - PORTLAND, OREGON TO STOCKTON, CALIFORNIA

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Wishram, Washington	GN (SPS)	1	1	106	3,850	153	1,977	41
2. Wishram, Washington	Bend, Oregon	GN (OT)	-	1	152	12,774	3,613	6,467	109
3. Bend, Oregon	Klamath Falls, Oregon	GN	-	1	140	3,090	1,352	3,278	86
4. Klamath Falls, Oregon	Bieber, California	GN	-	1	91	526	496	1,703	62
5. Bieber, California	Keddie, California	WP	1	1[1/]	112	11,341	2,246	3,622	112
6. Keddie, California	Oroville, California	WP	-	1[2/]	75	12,155	-	372	-
7. Oroville, California	Stockton, California	WP	-	1	112	476	89	1,704	29
8. Total - Portland - Stockton			2	7	788	44,212	7,949	19,123	112

GN - Great Northern; SPS - Spokane, Portland & Seattle; OT - Oregon Trunk

TRANSPORTATION CONDITIONS - STOCKTON, CALIFORNIA TO PORTLAND, OREGON

SOUTHERN PACIFIC ROUTE VIA ROSEVILLE, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Stockton, California	Roseville, California	SP	-	1 1/	61	303	221	1,144	25
2. Roseville, California	Gerber, California	SP	-	1	107	811	349	1,902	34
3. Gerber, California	Dunsmuir, California	SP	-	1	107	8,437	2,353	4,166	83
4. Dunsmuir, California	Klamath Falls, Oregon	SP	-	1	109	8,663	2,977	4,611	131
5. Klamath Falls, Oregon	Crescent Lake, Oregon	SP	-	1	99	2,671	947	2,424	66
6. Crescent Lake, Oregon	Eugene, Oregon	SP	-	1	98	10,130	107	975	49
7. Eugene, Oregon	Portland, Oregon	SP	1	1	121	2,369	380	909	49
8. Total - Stockton - Portland			1	7	702	33,404	7,334	17,131	131

Note: 1/ - Engine District - Fresno, California to Roseville, California or Tracy, California to Roseville, California

SP - Southern Pacific

TRANSPORTATION CONDITIONS - STOCKTON, CALIFORNIA TO PORTLAND, OREGON

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Stockton, California	Oroville, California	WP	-	1	112	476	267	1,999	37
2. Oroville, California	Keddie, California	WP	-	1[1]	75	12,155	2,981	4,655	90
3. Keddie, California	Bieber, California	WP	1	1[2]	112	11,341	3,154	4,771	133
4. Bieber, California	Klamath Falls, Oregon	GN	-	1	91	526	473	1,696	57
5. Klamath Falls, Oregon	Bend, Oregon	GN	-	1	140	3,090	883	2,637	52
6. Bend, Oregon	Wishram, Washington	GN (OT)	-	1	152	12,774	117	1,582	43
7. Wishram, Washington	Portland, Oregon	GN (SPS)	1	1	106	3,850	16	1,743	25
8. Total - Stockton - Portland			2	7	788	44,212	7,891	19,083	133

WP - Western Pacific; GN - Great Northern; OT - Oregon Trunk; SPS - Spokane, Portland and Seattle

TRANSPORTATION CONDITIONS - PORTLAND, OREGON TO SAN FRANCISCO, CALIFORNIA

SOUTHERN PACIFIC ROUTE VIA ROSEVILLE, CALIFORNIA - STOCKTON, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Eugene, Oregon	SP	1	1	121	2,369	774	2,566	74
2. Eugene, Oregon	Crescent Lake, Oregon	SP	-	1	98	10,130	4,438	6,333	112
3. Crescent Lake, Oregon	Klamath Falls, Oregon	SP	-	1	99	2,671	308	1,495	45
4. Klamath Falls, Oregon	Dunsmuir, California	SP	-	1	109	8,683	1,061	2,377	69
5. Dunsmuir, California	Gerber, California	SP	-	1	107	8,437	364	1,375	56
6. Gerber, California	Roseville, California	SP	-	1	107	811	267	1,757	38
7. Roseville, California	Tracy, California	SP	-	1	81	426	135	1,295	31
8. Tracy, California	San Francisco, California	SP	-	1	79	4,506	779	1,761	82
9. Total - Portland - San Francisco			1	8	801	38,032	8,126	18,961	112

SP - Southern Pacific

TRANSPORTATION CONDITIONS - PORTLAND, OREGON TO SAN FRANCISCO, CALIFORNIA

SOUTHERN PACIFIC ROUTE VIA DAVIS, CALIFORNIA - OAKLAND, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Eugene, Oregon	SP	1	1	121	2,369	774	2,566	74
2. Eugene, Oregon	Crescent Lake, Oregon	SP	-	1	98	10,130	4,438	6,333	112
3. Crescent Lake, Oregon	Klamath Falls, Oregon	SP	-	1	99	2,671	308	1,495	45
4. Klamath Falls, Oregon	Dunsmuir, California	SP	-	1	109	8,6[illegible]	1,061	2,377	69
5. Dunsmuir, California	Gerber, California	SP	-	1	107	8,437	364	1,375	56
6. Gerber, California	Davis, California	SP	-	1 1/	113	292	268	1,793	36
7. Davis, California	Oakland, California	SP	-	1 2/	74	1,913	187	1,318	39
8. Oakland, California	San Francisco, California	SP	-	Truck	11	-	-	-	-
9. Total - Portland - San Francisco			1	7 + Truck	732	34,495	7,400	17,257	112

SP - Southern Pacific

Notes: 1/ - Engine District - Gerber to Roseville, California via Davis

TRANSPORTATION CONDITIONS - PORTLAND, OREGON, TO SAN FRANCISCO, CALIFORNIA

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA (WESTERN PACIFIC TERMINATION)

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Wishram, Washington	GN (SPS)	1	1	106	3,850	153	1,977	41
2. Wishram, Washington	Bend, Oregon	GN (OT)	-	1	152	12,774	3,613	6,467	109
3. Bend, Oregon	Klamath Falls, Oregon	GN	-	1	140	3,090	1,352	3,278	86
4. Klamath Falls, Oregon	Bieber, California	GN	-	1	91	526	496	1,703	62
5. Bieber, California	Keddie, California	WP	1	1 1/	112	11,341	2,246	3,622	112
6. Keddie, California	Oroville, California	WP	-	1 2/	75	12,155	-	372	-
7. Oroville, California	Stockton, California	WP	-	1	112	476	89	1,704	29
8. Stockton, California	Oakland, California	WP	-	1	87	2,882	844	1,915	70
9. Oakland, California	San Francisco, California	WP	-	Barge	5	-	-	-	-
10. Total Portland - San Francisco			2	8 + Barge	880	47,094	8,793	21,038	112

GN - Great Northern; SPS - Spokane, Portland & Seattle; OT - Oregon Trunk; WP - Western Pacific

Notes: 1/ - Engine District - Bieber to Portola, California; 2/ - Engine District - Portola to Oroville.

Sheet 9 of 17 sheets

TRANSPORTATION CONDITIONS - PORTLAND, OREGON, TO SAN FRANCISCO, CALIFORNIA

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA (SANTA FE TERMINATION)

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Wishram, Washington	GN (SPS)	1	1	106	3,850	153	1,977	41
2. Wishram, Washington	Bend, Oregon	GN (OT)	-	1	152	12,774	3,613	6,467	109
3. Bend, Oregon	Klamath Falls, Oregon	GN	-	1	140	3,090	1,352	3,278	86
4. Klamath Falls, Oregon	Bieber, California	GN	-	1	91	526	496	1,703	62
5. Bieber, California	Keddie, California	WP	1	1 1/	112	11,341	2,246	3,622	112
6. Keddie, California	Oroville, California	WP	-	1 2/	75	12,155	-	372	--
7. Oroville, California	Stockton, California	WP	-	1	112	476	89	1,704	29
8. Stockton, California	Richmond, California	AT&SF	1	1	68	1,721	457	1,418	69
9. Richmond, California	San Francisco, California	AT&SF	-	Barge	10	-	-	-	-
10. Total Portland - San Francisco			3	8 + Barge	866	45,933	8,406	20,541	112

GN - Great Northern; SPS - Spokane, Portland & Seattle; OT - Oregon Trunk; WP - Western Pacific;

TRANSPORTATION CONDITIONS - SAN FRANCISCO, CALIFORNIA, TO PORTLAND, OREGON

SOUTHERN PACIFIC ROUTE VIA STOCKTON, CALIFORNIA - ROSEVILLE, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. San Francisco, California	Tracy, California	SP	-	1	79	4,504	818	1,947	77
2. Tracy, California	Roseville, California	SP	-	1	81	423	234	1,447	25
3. Roseville, California	Gerber, California	SP	-	1	107	811	349	1,902	34
4. Gerber, California	Dunsmuir, California	SP	-	1	107	8,437	2,353	4,166	83
5. Dunsmuir, California	Klamath Falls Oregon	SP	-	1	109	8,683	2,977	4,611	131
6. Klamath Falls, Oregon	Crescent Lake, Oregon	SP	-	1	99	2,671	947	2,424	68
7. Crescent Lake, Oregon	Eugene, Oregon	SP	-	1	98	10,130	107	975	49
8. Eugene, Oregon	Portland, Oregon	SP	1	1	121	2,369	380	1,909	49
9. Total San Francisco - Portland			1	8	801	38,028	8,165	19,381	131

SP - Southern Pacific

TRANSPORTATION CONDITIONS - SAN FRANCISCO, CALIFORNIA TO PORTLAND, OREGON

SOUTHERN PACIFIC ROUTE VIA OAKLAND, CALIFORNIA - DAVIS, CALIFORNIA

	From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1.	San Francisco, California	Oakland, California	SP	-	Truck	11	-	-	-	-
2.	Oakland, California	Davis, California	SP	-	1 1/	74	1,843	223	1,377	69
3.	Davis, California	Gerber, California	SP	-	1 2/	113	292	462	2,095	42
4.	Gerber, California	Dunsmuir, California	SP	-	1	107	8,437	2,353	4,166	83
5.	Dunsmuir, California	Klamath Falls, Oregon	SP	-	1	109	8,683	2,977	4,611	131
6.	Klamath Falls, Oregon	Crescent Lake, Oregon	SP	-	1	99	2,671	947	2,424	68
7.	Crescent Lake, Oregon	Eugene, Oregon	SP	-	1	98	10,130	107	975	49
8.	Eugene, Oregon	Portland, Oregon	SP	1	1	121	2,369	380	1,909	49
9.	Total San Francisco - Portland			1	7 + Truck	732	34,425	7,449	17,557	131

SP - Southern Pacific

Notes: 1/ - Engine District - Oakland, California to Roseville, California

TRANSPORTATION CONDITIONS - SAN FRANCISCO, CALIFORNIA TO PORTLAND, OREGON

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA (WESTERN PACIFIC ORIGINATION)

	From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1.	San Francisco, California	Oakland, California	WP	-	Barge	5	-	-	-	-
2.	Oakland, California	Stockton, California	WP	-	1	87	2,882	862	2,038	61
3.	Stockton, California	Oroville, California	WP	-	1	112	476	267	1,999	37
4.	Oroville, California	Keddie, California	WP	-	1 1/	75	12,155	2,981	4,655	90
5.	Keddie, California	Bieber, California	WP	1	1 2/	112	11,341	3,154	4,771	133
6.	Bieber, California	Klamath Falls, Oregon	GN	-	1	91	526	473	1,696	57
7.	Klamath Falls, Oregon	Bend, Oregon	GN	-	1	140	3,090	883	2,637	52
8.	Bend, Oregon	Wishram, Washington	GN (OT)	-	1	152	12,774	117	1,582	43
9.	Wishram, Washington	Portland, Oregon	GN (SPS)	1	1	106	3,830	16	1,741	25
10.	Total San Francisco - Portland			2	8 + Barge	880	47,094	8,753	21,121	133

WP - Western Pacific; GN - Great Northern; OT - Oregon Trunk; SPS - Spokane, Portland & Seattle

Note: 1/ - Engine District - Oroville to Portola; 2/ Engine District - Portola, California, to Bieber, California.

TRANSPORTATION CONDITIONS - SAN FRANCISCO, CALIFORNIA TO PORTLAND, OREGON

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA (SANTA FE ORIGINATION)

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine District (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. San Francisco, California	Richmond, California	ATSF	-	Barge	10	-	-	-	-
2. Richmond, California	Stockton, California	ATSF	1	1	68	1,721	476	1,456	69
3. Stockton, California	Oroville, California	WP	-	1	112	476	267	1,999	37
4. Oroville, California	Keddie, California	WP	-	1 1/	75	12,155	2,981	4,655	90
5. Keddie, California	Bieber, California	WP	1	1 2/	112	11,341	3,154	4,771	133
6. Bieber, California	Klamath Falls, Oregon	GN	-	1	91	526	473	1,696	57
7. Klamath Falls, Oregon	Bend, Oregon	GN	-	1	140	3,090	883	2,637	52
8. Bend, Oregon	Wishram, Washington	GN (OT)	-	1	152	12,774	117	1,582	43
9. Wishram, Washington	Portland, Oregon	GN (SPS)	1	1	106	3,850	16	1,743	25
10. Total - San Francisco - Portland			3	8 + Barge	866	45,933	8,367	20,539	133

Notes: 1/ - Engine District - Oroville, California to Portola, California
2/ - Engine District - Portola, California to Bieber, California

TRANSPORTATION CONDITIONS - PORTLAND, OREGON TO LOS ANGELES, CALIFORNIA

SOUTHERN PACIFIC ROUTE VIA ROSEVILLE, CALIFORNIA - STOCKTON, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine District (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Eugene, Oregon	SP	1	1	121	2,369	774	2,566	74
2. Eugene, Oregon	Crescent Lake, Oregon	SP	-	1	98	10,130	4,438	6,333	112
3. Crescent Lake, Oregon	Klamath Falls, Oregon	SP	-	1	99	2,671	308	1,495	45
4. Klamath Falls, Oregon	Dunsmuir, California	SP	-	1	109	8,683	1,061	2,377	69
5. Dunsmuir, California	Gerber, California	SP	-	1	107	8,437	364	1,375	56
6. Gerber, California	Roseville, California	SP	-	1	107	811	267	1,757	38
7. Roseville, California	Fresno, California	SP	-	1	179	518	409	3,101	25
8. Fresno, California	Bakersfield, California	SP	-	1	111	134	329	1,953	36
9. Bakersfield, California	Los Angeles, California	SP	-	1	167	13,863	4,893	6,946	145
10. Total Portland - Los Angeles			1	9	1,098	47,616	12,843	27,903	145

SP - Southern Pacific

TRANSPORTATION CONDITIONS - PORTLAND, OREGON TO LOS ANGELES, CALIFORNIA

WESTERN PACIFIC VIA BIEBER, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine District (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Wishram, Washington	GN (SPS)	1	1	106	3,850	153	1,577	41
2. Wishram, Washington	Bend, Oregon	GN (OT)	-	1	152	12,774	3,613	6,467	109
3. Bend, Oregon	Klamath Falls, Oregon	GN	-	1	140	3,096	1,352	3,278	86
4. Klamath Falls, Oregon	Bieber, California	GN	-	1	91	526	496	1,703	62
5. Bieber, California	Keddie, California	WP	1	1[1]	112	11,341	2,246	3,622	112
6. Keddie, California	Oroville, California	WP	-	1[2]	75	12,155	-	372	-
7. Oroville, California	Stockton, California	WP	-	1	112	476	89	1,704	29
8. Stockton, California	Calwa, California	ATSF	1	1	127	551	437	2,373	33
9. Calwa, California	Bakersfield, California	ATSF	-	1	107	389	224	1,853	30
10. Bakersfield, California	Barstow, California	ATSF	-	1	142	9,085	3,953	5,878	145
11. Barstow, California	San Bernardino, California	ATSF	-	1	82	2,971	1,748	2,802	100
12. San Bernardino, California	Los Angeles, California	ATSF	-	1	67	1,514	231	873	50
13. Total - Portland - Los Angeles			3	12	1,313	58,730	14,543	32,902	145

[41 638]

TRANSPORTATION CONDITIONS - LOS ANGELES, CALIFORNIA TO PORTLAND, OREGON

SOUTHERN PACIFIC ROUTE VIA STOCKTON, CALIFORNIA - ROSEVILLE, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine District (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Los Angeles, California	Bakersfield, California	SP	-	1	167	13,863	4,970	7,082	138
2. Bakersfield, California	Fresno, California	SP	-	1	111	134	203	1,741	35
3. Fresno, California	Roseville, California	SP	-	1	179	515	274	2,879	25
4. Roseville, California	Gerber, California	SP	-	1	107	811	349	1,902	34
5. Gerber, California	Dunsmuir, California	SP	-	1	107	8,437	2,353	4,166	83
6. Dunsmuir, California	Klamath Falls, Oregon	SP	-	1	109	8,683	2,977	4,611	131
7. Klamath Falls, Oregon	Crescent Lake, Oregon	SP	-	1	99	2,671	947	2,424	68
8. Crescent Lake, Oregon	Eugene, Oregon	SP	-	1	98	10,130	107	975	49
9. Eugene, Oregon	Portland, Oregon	SP	1	1	121	2,369	380	1,909	49
10. Total - Los Angeles, California - Portland, Oregon			1	9	1,098	47,613	12,560	27,689	138

SP - Southern Pacific

TRANSPORTATION CONDITIONS - LOS ANGELES, CALIFORNIA, TO PORTLAND, OREGON

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Los Angeles California	San Bernardino California	ATSFP	-	1	67	1,514	1,123	2,118	69
2. San Bernardino, California	Barstow, California	ATSFP	-	1	82	2,971	2,789	3,648	176
3. Barstow, California	Bakersfield, California	ATSFP	-	1	142	9,085	2,243	3,906	138
4. Bakersfield, California	Calwa, California	ATSFP	-	1	107	389	115	1,670	28
5. Calwa California	Stockton, California	ATSFP	1	1	127	551	163	1,932	31
6. Stockton, California	Oroville, California	WP	-	1	112	476	267	1,999	37
7. Oroville, California	Keddie, California	WP	-	1 1/	75	12,155	2,981	4,655	90
8. Keddie, California	Bieber, California	WP	1	1 2/	112	11,341	3,154	4,771	133
9. Bieber, California	Klamath Falls, Oregon	CN	-	1	91	526	473	1,696	57
10. Klamath Falls, Oregon	Bend, Oregon	CN	-	1	140	3,090	883	2,637	52
11. Bend, Oregon	Wishram, Washington	CN (OT)	-	1	152	12,774	117	1,582	43
12. Wishram, Washington	Portland, Oregon	CN (SPS)	1	1	106	3,850	16	1,743	25
13. Total - Los Angeles - Portland			3	12	1,313	58,722	12,343	32,597	176

ATSFP - Santa Fe; WP - Western Pacific; CN - Great Northern; OT - Oregon Trunk; SPS - Spokane.

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 34

	SOUTHERN PACIFIC SOUTHBOUND						WESTERN PACIFIC BIEBER ROUTE SOUTHBOUND	
	HAS (Daily)	377 PCW (Tues., Wed., Thur., Fri. & Sat.)	PNL (Daily)	ADV SMW CS (Daily)	ADV. PNL (Daily)	TFC SPECIAL (Wed., Thur., and Sat.)	GWS (Daily)	CAL (Daily)
Lv. Portland	5:00AM[1]	8:50AM[1]	5:00AM[1]	5:00PM[0]	5:00PM[0]	12:01AM[1]	5:00AM[1]	4:30PM[0]
Ar. Oakland	4:45PM[2]	5:05AM[2]	-	8:45PM[2]	-	-	8:00PM[3]	8:00PM[2]
Ar. San Francisco	10:30PM[2]	-	-	11:30PM[2]	-	-	10:30PM[3]	10:30PM[2]
Ar. Los Angeles	-	-	4:00PM[3]	-	11:30AM[3]	6:30AM[2]	1:00PM[4]	1:00PM[3]
Elapsed Time - Portland to:								
Oakland	35'45"	20'15"	-	51'45"	-	-	63'00"	51'30"
San Francisco	41'30"	-	-	54'30"	-	-	65'30"	54'00"
Los Angeles	-	-	59'00"	-	66'30"	30'30"	80'00"	68'30"

	SOUTHERN PACIFIC NORTHBOUND					WESTERN PACIFIC BIEBER ROUTE NORTHBOUND		
	375 STARPACER (Tues., Wed., Thur., Fri.)	NCP (Daily)	VIW-NCP (Daily)	PCE Mon., Tues., Wed., And Thur.)	OVE or SME RPS (Daily)	SWG (Daily)	EXP (See Note)	NCX (Daily)
Lv. Los Angeles	12:01AM[1]	8:00AM[1]	9:00PM[0]	-	-	3:00AM[1]	10:00PM[0]	-
Lv. San Francisco	-	-	-	-	11:00PM[0]	7:00PM[0]	4:00AM[1]	4:00PM[1]
Lv. Oakland	-	-	-	10:35PM[0]	11:15PM[0]	10:00PM[0]	7:00AM[1]	7:00AM[1]
Ar. Portland	6:30AM[2]	11:30AM[3]	11:30AM[3]	6:50PM[1]	5:00PM[2]	5:30PM[3-2]	10:30PM[2]	10:00AM[3]
Elapsed Time - To Portland from:								
Los Angeles	30'30"	51'30"	62'30"	-	-	62'30"	48'30"	-
San Francisco	-	-	-	-	42'00"	46'30"	42'30"	54'00"
Oakland	-	-	-	20'15"	41'45"	43'30"	39'30"	51'00"

Note - Departs Los Angeles - Mon., Tues., & Fri.
Departs Oakland - Tues., Wed., and Sat.

BEFORE THE INTERSTATE COMMERCE COMMISSION
EXHIBIT No. 35

GROSS TON MILES TRAILING

EAST, WEST AND TOTAL

GERBER - DUNSMUIR

1943	East	865,061,000
	West	1,117,606,000
	Total	1,982,667,000
1944	East	959,927,000
	West	1,228,572,000
	Total	2,188,499,000
1945	East	894,622,000
	West	1,088,807,000
	Total	1,983,429,000
1946	East	824,962,000
	West	1,129,434,000
	Total	1,954,396,000
1958	East	791,329,000
	West	848,732,000
	Total	1,640,061,000
1959	East	906,997,000
	West	1,034,480,000
	Total	1,941,477,000
1960	East	882,530,000
	West	1,001,879,000
	Total	1,884,409,000

[fol. 642]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

BRIEF OF COMPLAINANTS TO THE HEARING EXAMINER—
Dated and Served July 6, 1961

Due Date: July 10, 1961.

• • • • • • •

[fol. 643] F. Why Rates Were Not Sought Via Wishram:

Northern Pacific has attempted, in part, to justify its unlawful practices at the Portland Gateway by asserting that a more logical routing for "Inside Gateway" traffic to and from defendants' points east of the Cascades would be via Wishram. Surely, that defendant realizes that had an attempt been made to establish rates via that route on [fol. 644] traffic to or from points east of the Cascades, it would have vigorously asserted that relief should be confined to the point where the discrimination actually occurs, i.e., Portland.

As neither Northern Pacific nor Southern Pacific serve Wishram a Section 3(4) complaint would be difficult to sustain. This complaint attempts to terminate the unlawful practices against connecting carriers reaching a single gateway. A Section 1(4) complaint via Wishram would bring forth the claim that such rates via Wishram would short haul defendants.

• • • • • • •

[fol. 645] Requested Findings

It is respectfully requested that upon the record herein made, the Commission find substantially as follows:

1. Complainants and the lines constituting the "Inside Gateway" are connecting lines, as is Southern Pacific Com-

pany, with defendants Northern Pacific and Union Pacific at Portland, Oregon.

2. The conditions affecting the handling by defendants of traffic moved through the Portland Gateway are materially and substantially the same whether the traffic is moved to that gateway by Southern Pacific or the "Inside Gateway".

3. Defendants have practiced unlawful discrimination against complainants by failing and refusing to join with them and their connections in the establishment of joint through rail rates via Portland, Oregon, on the same level as have been established by those defendants with Southern Pacific Company, except in very limited cases.

4. That Southern Pacific Company is complainants' principal competitor and defendants' unlawful practices have caused complainants irreparable damage.

5. Defendants have failed to provide all reasonable, proper and equal facilities for the interchange of traffic between them and complainants, and have failed to make [fol. 646] the necessary and proper arrangements to assure that traffic received, forwarded or handled in connection with complainants is treated in essentially the same manner as traffic received, forwarded or handled in connection with Southern Pacific Company, with very limited exceptions, such as the movement of cast iron pipe.

6. Defendants' failures and refusals as aforesaid constitute violations of Section 3(4) Part I of the Interstate Commerce Act.

7. That such practices should be ordered to cease and desist upon the expiration of thirty (30) days from the effective date of an order of the Commission in this proceeding.

8. That such actions similarly result in a failure to provide reasonable routes, rates, facilities and services

all in further violation of Section 1(4) Part I Interstate Commerce Act.

9. That such reasonable routes, rates and facilities as will assure the "Inside Gateway" an opportunity to provide service upon the same level and under the same conditions as is now available to the Southern Pacific Company, should be ordered established upon the expiration of thirty (30) days from the effective date of an order of the Commission in this proceeding.

10. That this proceeding be kept open for the purpose [fol. 647] of allowing the parties, within a reasonable time, to establish just and reasonable divisions by mutual agreement, failing in which the proceeding shall be reopened for the limited purpose of the establishment of such just and reasonable divisions by the Commission.

11. Further, complainants request such other findings and orders as the Commission deems just, meet and necessary to eliminate the unlawful conditions herein complained of.

Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 647a] Certificate of Service (omitted in printing).

[fol. 648]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

COMPLAINANTS' REPLY TO EXCEPTIONS OF NORTHERN PACIFIC RAILWAY COMPANY, UNION PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY—Dated and Served October 6, 1961

* * * * * * *

[fol. 649] At no stage of the proceedings has it been the intention of complainants to show the existence of through routes since such a showing has hardly been necessary to sustain the relief sought. If defendants treated all com-[fol. 650] plainants' traffic the way they do the cast iron pipe (these rates were published after a shipper complaint was filed, but before it was heard), there would have been no need to file this complaint. The existence of through routes and rates on cast iron pipe does prove some very germane issues—primarily that important traffic does move without trouble over the Inside Gateway to and through Portland *in conjunction* with defendants. Whether or not this establishes the fact of through routes has not concerned complainants. We will not be led down a diversionary path away from the basic issues here pertinent. The issue is whether the principal competitor of complainants is being given unlawful favored treatment. It is answered affirmatively by the Examiner. The finding is amply supported in the record.

Reply to "Exception No. 2"

We surely agree with the cases cited as witness complainants' brief (p. 13 thereof). It is truly difficult to read into the language of *Atlantic Coast Line R. Co.* v. *U.S.* 284 U.S. 288 anything other than a positive finding that you need *not* physically connect with the discriminating line in order to qualify as a connecting line under the language of the statute.

The Supreme Court has in effect said that the lines which [fol. 651] are to be classified as "connecting lines" are not only those that have a direct physical connection with the defendant but *also include* those carriers making up a *through route which does connect with the defendant.* Surely there is no doubt that the Western Pacific is part of a through route (Santa Fe, Western Pacific, Great Northern) which through route *does* connect with Northern Pacific at Portland. Complainants do not believe that it

is necessary, or even proper, to speculate on the Supreme Court's intention regarding the terms employed, as the Court makes it manifestly clear that it intended no such restrictive interpretation as urged by defendants.

In discussing the purpose and design of the language employed and at issue in this case, the Court stated, in part:

> "In order to preserve, among other things, the existing *and possible* through routes via the Clinchfield on railroads other than the Atlantic Coast Line and the Louisville & Nashville the Commission, in authorizing the lease, made it subject to five conditions which the lessees accepted." (p. 291) (Emphasis ours).

It is in those conditions that the term "connecting lines" was used, and their definition was determined in connection with the objective outlined by the Court, namely, to preserve not only the then existing but also to preserve *possible* future through routes. That clear objective would be impossible under defendants' interpretation of connect-
[fol. 652] ing lines. The strained and unnatural interpretation urged by defendants is without merit and if adopted will render section 3(4) inoperative and unworkable except in the fewest possible circumstances.

* * * * * * *

[fol. 653] Secretary's certificate to following transcript (omitted in printing).

[fol. 654]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

THE WESTERN PACIFIC RAILROAD COMPANY, et al.

v.

CAMAS PRAIRIE RAILROAD COMPANY, et al.

Transcript of hearing—December 14, 1961

Hearing Room "B",
Interstate Commerce Commission,
Washington, D. C.

The above-entitled matter came on for oral argument before The Commission, by Division No. 2, at 10 o'clock a.m.

Present: Commissioners Freas (Presiding), Goff and Herring.

* * * * * * *

[fol. 655]

STATEMENT OF COMMISSIONER FREAS AND COLLOQUY WITH MR. TREANOR

Commr. Freas: In spite of the fact that there is a physical connection and that as you said, the cars would be handled that way, if the shipper should request it, I understand that you are not at least not emphatically contending that there is any through route today? What, in your opinion, constitutes or what determines whether there is a through route or not?

Mr. Treanor: I think basically the question of whether or not there is a through route would be wholly dependent upon the physical ability to handle the car and the stated willingness of the carriers involved at both ends to establish such a route and to handle the traffic in that manner.

I have not emphatically, as you say, Mr. Commissioner, contended there is a through route here because I don't think there are any through routes in existence today, except on the cast iron pipe and of course on livestock or the class rated commodities which are not moving any traffic.

[fol. 656] The cast iron pipe moves in substantial quantity. I don't know whether the fact that we have through routes well established on cast iron pipe, a substantial movement, a condition that has existed over ten years, would justify my saying to this Commission, "there definitely are in effect through routes for all purposes."

Commr. Freas: I lost myself in your argument. You say on the one hand the facilities are available, if a shipper for reasons of its own wanted to use them, the carriers stand ready and willing to transport the traffic, but still you say there are no through routes.

As I follow that, that would boil down then to the point of whether or not the carriers considered it through route and nothing more, is that right?

Mr. Treanor: I think it goes beyond that. I think there has to be a holding out to the public. There has to be a—

Commr. Freas: I understand there is a holding out if the public is willing to pay the combination rates.

Mr. Treanor: Certainly for my purposes, from the Western Pacific's, I would like to be able to say in all candor to you there are through rates and routes here.

* * * * * * *

[fol. 657] Commr. Freas: One further question on just what you are asking.

The Examiner in the opening paragraph of his recommended report says that you are alleging violations as a result of the failure of through routes and divisions.

According to your complaint, I believe you are asking for through routes, through rates and divisions in the event that they are not voluntarily disposed of between the parties. So the Examiner's statement is not quite complete, is it?

Mr. Treanor: No, sir, to that extent it would not be. I think he was trying to paraphrase it. We did not feel he had materially mis-stated anything there. We do ask that you keep this proceeding open in the event that we are unable to agree on divisions.

Of course, he should have added the fact that we were seeking the through rate which is the key.

Commr. Freas: The question of divisions is not reached now.

[fol. 658] Mr. Treanor: No, sir. I would like to make the point that we feel there is no service required of these defendants in connection with the traffic that they would take from the inside gateway that they won't have to perform in connection with the traffic that comes from the Southern Pacific. If there is any difference, any circuity at all involved in this proceeding, it is on the segment of route which comes up with Southern Pacific on the one hand versus the inside gateway on the other.

The inside gateway is slightly longer than the Southern Pacific route into Portland. North of Portland there is no difference in the distances that are involved.

• • • • • • •

[fol. 659]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

COMPLAINANTS' PETITION FOR RECONSIDERATION OF THE REPORT AND ORDER OF DIVISION 2—Dated and Served August 27, 1962

Due Date: September 1, 1962

• • • • • • •

[fol. 660] Conclusion

• • • • • • •

1. Complainants and the lines constituting the "Inside Gateway" are connecting lines, as is Southern Pacific

Company, with defendants Northern Pacific and Union Pacific at Portland, Oregon.

2. The conditions affecting the handling by defendants of traffic moved through the Portland Gateway are materially and substantially the same whether the traffic is moved to that gateway by Southern Pacific or the "Inside Gateway".

3. Defendants have practiced unlawful discrimination against complainants by failing and refusing to join with them and their connections in the establishment of a general line of joint through rail rates via Portland, Oregon, on the same level as have been established by those defendants with Southern Pacific Company.

4. That Southern Pacific Company is complainants' principal competitor and defendants' unlawful practices have caused complainants irreparable damage.

5. Defendants have failed, except in limited circumstances, to provide all reasonable, proper and equal facilities for the interchange of traffic between them and complainants, and have failed to make the necessary and proper arrangements to assure that traffic received, forwarded, or handled in connection with complainants is treated in essentially the same manner as traffic re- [fol. 661] ceived, forwarded, or handled in connection with Southern Pacific Company.

6. Defendants' failures and refusals as aforesaid, constitute violations of Section 3 (4) Part I of the Interstate Commerce Act.

7. That such practices should be ordered to cease and desist upon the expiration of thirty (30) days from the effective date of an order of the Commission in this proceeding.

8. Further, complainants request such other findings and orders as the Commission deems just, meet and neces-

sary to eliminate the unlawful conditions herein complained of.

* * * * * * *

Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 662] Certificate of Service (omitted in printing).

[fol. 666]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

COMPLAINANTS' PETITION FOR FURTHER HEARING FOR PURPOSE OF INTRODUCING NEWLY DEVELOPED EVIDENCE—December 28, 1962

Statement

This is a complaint proceeding. Oral Hearings were held May 8th through May 10, 1961 inclusive; Briefs were filed and the Examiner's Report and Recommended Order thereafter served. Subsequent to filing Exceptions and Replies, thereto, the parties were heard in Oral Argument [fol. 667] on December 14, 1961. The Report and Order of Division 2 reversing Hearing Examiner Wright was served August 2, 1962. Petition for Reconsideration by complainants has been filed and replied to and is presently pending before the Commission.

The Western Pacific, and its subsidiary lines, hereinafter referred to collectively as "complainant" herein requests Further Limited Hearing, under the modified procedure, for the purpose of introducing newly developed evidence as hereinafter described.

Evidence to Be Introduced

In the event the Commission should grant further hearing for the limited purpose of permitting the introduction of newly developed evidence, Petitioner would present the following:

1. That, subsequent to receipt of the Report and Order of Division 2 herein, Western Pacific launched a campaign to inform its interested shippers of the necessity of requesting, by formal application to the carriers' rate bureaus, the voluntary publication of rates via Bieber on a level competitive with Southern Pacific via Portland.

[fol. 668]

2. That, as of the date of the preparation of this Petition, fifty (50) individual such requests have actually been filed and docketed with the Pacific Southcoast Freight Bureau and the North Pacific Coast Freight Bureau; that an additional number of such requests have actually been filed but not yet docketed; that even more such requests are being prepared and that by the date of hearing, if such be granted, will have been either actually docketed or filed for docketing; that the above identified rate bureaus are the proper rate legislative bodies for such filings.

3. That, such formal requests are from all types of industries on the West Coast including the largest and some of the smallest; that rates have been requested upon all major commodities including, but not limited to, canned goods, iron and steel articles, lumber and lumber products, paper and paper articles, plaster, plaster board, gypsum, furniture, tin cans, rice, alfalfa, cotton seed, grain, feeds, flour, dried peas and [fol. 669] beans, dried fruits, butter, boats, scrap aluminum, Lignin liquor, acoustical materials and asphalt tile; that one request has been made on behalf of a traffic association that includes, within its member-

ship, approximately 150 individual shippers and others, yet this is counted as only one request.

4. That, the response to Petitioners' campaign to induce shippers to take affirmative action through the rate bureaus has been overwhelming and without precedent in the recallable history of such rate bureaus.

5. That, as of the date of preparing this Petition, the defendant lines have failed to take favorable action with regard to any of these docketed matters; that Petitioner expects to prove that such condition will be existing on the date of further hearing, if granted, no matter how far off such date may be.

6. That, the formal requests which have been made to the rate bureaus have been made in good faith and in response to the open invitation of the defendant [fol. 670] lines to, in the future, satisfy all legitimate and reasonable requests; that such requests as filed, are legitimate and reasonable and have been justified by the shippers.

This evidence will not be cumulative, and was not previously adduced because it was not in existence until now. In fact, until receipt of the Report and Order of Division 2 on the 2nd day of August 1962, it was the opinion of Petitioner that the question of whether the shippers had entered *formal* requests for competitive rates was immaterial to the issues in this proceeding, namely, whether the discriminatory practices of defendants were unlawful.

Argument in Support of Petition

Petitioner frankly states herein that it continues to adhere to the view that, under the allegation of discrimination in violation of Section 3 (4), the question of whether there have been any formal shipper requests for the publication of these rates is at least of questionable materiality. Apparently, this view was shared by Hearing Examiner

Wright in his Report and Recommended Order served herein. However, defendants continued to press this question in subsequent pleadings and in Oral Argument where [fol. 671] the Northern Pacific stated:

> "Our company, the Northern Pacific, has had only one request from a shipper in the last six years for the publication of joint rates via the routes here sought.
>
> This complaint has been satisfied and the testimony in this record is uncontroverted that we will satisfy all of such legitimate and reasonable requests brought in the future." (TR 500)

Apparently it was given some weight by the Commission, as indicated at Sheets 13 and 23 of the Report and Order of Division 2 herein.

This question, therefore, apparently played a material part in the ultimate conclusions set forth therein, and it is respectfully submitted that this newly developed evidence is most relevant, pertinent and material to the ultimate determination of the vitally important issues presented herein.

Request for Modified Procedure Handling

It is submitted that the nature of this evidence is such that it is susceptible of submission under the Modified Procedure and accordingly, it is respectfully requested that, should Further Hearing be granted for the limited purpose of introducing the evidence above referred to, it be assigned for such handling in the interest of all parties.

[fol. 672] Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 673] Certificate of Service (omitted in printing).

[fol. 674]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Service Date
January 24, 1963

At a Session of the Interstate Commerce Commission, Division 2, acting as an Appellate Division, held at its office in Washington, D. C.

No. 33679

WESTERN PACIFIC RAILROAD COMPANY et al.

v.

CAMAS PRAIRIE RAILROAD COMPANY et al.

ORDER—Entered January 18, 1963

Upon consideration of the record in the above-entitled proceeding, petition, filed August 29, 1962, of complainants for reconsideration of the report and order of Division 2, dated July 26, 1962, together with a request that the matter herein be declared to be of general transportation importance, and of replies thereto of intervener, Southern Pacific Company, defendant, Union Pacific Railroad Company, and defendants, Northern Pacific Railway Company, Camas Prairie Railroad Company, and Walla Walla Valley Railway Company, filed October 12, 15, and 18, 1962, respectively;

It appearing, That pursuant to Rule 1.101a(4) of the General Rules of Practice the request for the aforesaid declaration is premature:

It is ordered, That the said petition for reconsideration be, and it is hereby, denied for the reason that sufficient grounds have not been presented to warrant granting the action sought.

By the Commission, Division 2, acting as an Appellate Division.

Harold D. McCoy, Secretary.

(Seal)

[fol. 676]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

COMPLAINANTS' PETITION FOR WAIVER OF THE PROVISIONS OF RULE 1.101(e) OF THE COMMISSION'S GENERAL RULES OF PRACTICE—January 19, 1963

Statement

Comes now The Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Company, complainants, hereinafter referred to collectively as "Western Pacific", and files this request for a waiver of the provisions of Rule 1.101 (e) of the Commission's General Rules of Practice.

[fol. 677] Secretary McCoy, under letter date of January 11, 1963, has refused to accept complainants' Petition for Further Hearing of December 28, 1962 on the grounds it was not accompanied by a request for such waiver of Rule 1.101(e). This request is made to correct that deficiency in the December 28, 1962 Petition.

Basis for Request

Western Pacific believes that inasmuch as this proceeding is still pending for final decision by the Commission it has the obligation and duty of calling to the Commission's attention *all newly developed evidence* relating to the facts relied upon by Division 2 in reaching the decision which is here under consideration.

Division 2, in its Order served August 2, 1962, stated in part:

> "The defendants stress that these shippers have been aware of the lack of joint rates and through routes through Bieber for the last 31 years and have not submitted a written request to the defendants for relief.

However, some verbal requests have been made. In the last six years only one shipper requested the Northern Pacific to establish joint rates through Bieber, and that request was handled to the satisfaction of the shipper."

and

[fol. 678] "Nothing of record, however, indicates that the existing through routes and joint rates are inadequate to meet the needs of the shipping public. In fact the failure of the shipper witnesses to initiate in the last 31 years a determined campaign to persuade the defendants of the necessity of establishing through routes between points on the complainants' lines in California and points on the defendants' lines in the Northwest, is at least some indication of the adequacy of the existing routes. The expression 'in the public interest' means more than a mere desire on the part of shippers for something that would merely be convenient or desirable for them. This desire must be weighed against the effect on other carriers and the general public. On the basis of this record, we cannot find that the public interest would be served by requiring the establishment of joint rates and through routes which are substantially slower and costlier than the present routes."

The evidence which Western Pacific now proposes to introduce is directly related to that issue. As shown in the attached Petition for Further Hearing, it was not, and could not have been, developed prior to the present date. This evidence was not in existence either at the time of the hearing or within 30 days after receipt of the Commission's Order of August 2, 1962.

Western Pacific believes that the Commission, having relied upon a specific condition existing at the time the record was made, must be advised as to the present status of the facts on that very same issue. It would be an in-[fol. 679] excusable waste of the Commission's time, as well as that of the parties litigant, to force Western

Pacific to file a new complaint based upon new facts when this matter is not yet closed. The filing of a new complaint, with all of its attendant expense and inconvenience, can be avoided by the simple expedient of accepting this Petition for Further Hearing and allowing the submission of the evidence under Modified Procedure as requested.

Wherefore, in the interest of justice and to avoid needless further proceedings herein, in order to bring this pertinent evidence to the attention of the Commission we respectfully request that the provisions of Rule 1.101(e) be waived. To facilitate further handling of this matter I am submitting at this time complainants' Petition for Further Hearing so that in the event it is accepted for filing it may be promptly submitted to the Commission.

Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 680] Certificate of Service (omitted in printing).

[fol. 682]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

THE WESTERN PACIFIC RAILROAD COMPANY, et al.,
Complainants,

vs.

CAMAS PRAIRIE RR. Co., et al., Defendants.

PETITION PURSUANT TO RULE 1.101(a) (4) GENERAL RULES OF PRACTICE SEEKING A FINDING THAT AN ISSUE OF GENERAL TRANSPORTATION IMPORTANCE IS INVOLVED—Filed January 30, 1963

Jurisdictional Statement

This Petition is filed by The Western Pacific Railroad Company, and its subsidiary lines, hereinafter referred to collectively as "Western Pacific". It is timely filed as the Order of Division 2 denying Western Pacific's Petition for Reconsideration, was served January 24, 1963, and such Order, pursuant to the provisions of Rule 1.101(a) (3) of the Commission's General Rules of Practice is administratively final.

Western Pacific's Petition for waiver of the provisions of Rule 1.101(e) and Petition for Further Hearing for Purpose of Introducing Newly Developed Evidence filed January 21, 1963, and as yet not acted upon, does not come within the purview of the precise provisions of Rule 1.101 (a) (4), and hence its pendency does not affect the filing of this Petition.

[fol. 683]

Arguments Reserved

As required by the rules, this Petition is directed only to the contention that this is a case involving a matter of general transportation importance. Failure to reassert the errors heretofore alleged to be reflected in Division 2's Orders (served August 2, 1962 and January 24, 1963) does not constitute a waiver or abandonment thereof.

Basis for Relief Sought

Division 2's decision is the first ruling of the Commission or the Federal Court system, which holds that a carrier must either physically connect with, or already participate in through routes with, the discriminating carrier in order to enjoy the protection afforded by Section 3 (4) of Part I of the Interstate Commerce Act.

Such a conclusion is directly contrary to the decision of the United States Supreme Court in *Chicago, Indianapolis & Louisville Ry. Co., et al.* v. *U. S.*, 270 U.S. 287, where the Court held, in part:

"It is argued that . . . where there is no direct physical connection with the railroad alleged to be discriminated against, and no joint service is being rendered by the . . . (defendants) with the South Shore, there can not, in law, be unjust discrimination. . . . "

"Direct physical connection with the carrier subjected to prejudice is not an essential."

[fol. 684] "Unjust discrimination may exist in law, as well as in fact, although the injury is inflicted by a railroad which has no such direct connection." (Pages 292-293.)

At no stage of this proceeding has Division 2 acknowledged the existence of, let alone distinguished, this decision which has been repeatedly called to its attention. It is clear that this decision serves to prescribe the limits of the language of Congress, and must directly and forcefully affect rail carriers in every section of the country. It is, in practical effect, a land mark decision which drastically limits the scope of the firm Congressional mandate against the creation and perpetuation of discriminatory practices and strangulating monopolies in the common carrier field. In such circumstances, this case far transcends the serious question of whether Western Pacific is being unjustly and unlawfully treated and is a matter of National concern.

Wherefore, it is respectfully prayed that it be found that this proceeding does involve an issue of general transportation importance and thus, with regard to all of its aspects and issues, is worthy of, and does require, the attention and decision of the Full Commission.

Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 685] Certificate of Service (omitted in printing).

[fol. 687]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I.C.C. Docket No. 33679

[Title omitted]

REPLY OF DEFENDANTS NORTHERN PACIFIC RAILWAY COMPANY, CAMAS PRAIRIE RAILROAD COMPANY AND WALLA WALLA VALLEY RAILWAY COMPANY TO COMPAINANTS' PETITION FOR WAIVER OF RULE 1.101(e) AND PETITION FOR FURTHER HEARING—Filed February 10, 1963

Preliminary Statement

Complainant, The Western Pacific Railroad Company, together with its short-line subsidiaries, hereinafter referred to as "Western Pacific" or "complainant," asserts in its petitions for waiver of provisions of Rule 1.101(e) and further hearing that this proceeding should be reopened to receive allegedly newly developed evidence consisting of [fol. 688] stimulated formal requests by certain shippers for rates on particular commodities via Bieber, California, and the Portland gateway between points in California, on the one hand, and points in Oregon, Washington and Idaho on the other.

Following the receipt of the adverse report and order of Division 2 on August 2, 1962, plaintiff, on August 29, filed a petition for reconsideration which was denied by the Commission on January 18, 1963. At the same time, complainant launched a vigorous campaign up and down the Pacific Coast to induce shippers to file requests with the appropriate carrier rate bureaus for joint through rates via Bieber, California. Complainant now asserts that such belatedly manufactured evidence constitutes recently discovered evidence requiring your Commission to waive Rule 1.101(e) as requested in complainant's first petition and grant complainant a further hearing for purposes of introducing such newly discovered evidence as requested in the second petition.

ARGUMENT

I.

Good Cause Not Shown for Waiver of Rule 1.101(e)

The decision of Division 2 in this proceeding was served on August 2, 1962. Complainant's petition for reconsideration was not served until January 21, 1963, almost six months after the Commission's order and almost five months after the time for filing such a petition had expired. [fol. 689] Rule 1.101(e) requires that petitions for rehearing, reargument and reconsideration be filed within 30 days after the date of service of a decision or order, "except for good cause shown." Complainant is obviously aware of this sound rule as evidenced by the fact that on August 29, 1962, it filed a 33-page petition for reconsideration which was replied to by the defendants, carefully considered by the Commission, and denied by Division 2, acting as an appellate division, on January 18, 1963, the same date complainant mailed the two petitions here in question.

In its petition for waiver of Rule 1.101(e), complainant endeavors to meet the salutary requirement of "good cause" by asserting that the alleged evidence which it has now manufactured "was not and could not have been, developed prior to the present date." (Petition for Waiver of Rule, p. 3). This is the sole reason proffered by complainant in justification of its failure to comply with the Commission's 30-day rule.

Complainant's proposed evidence consists of alleged formal requests by shippers for the publication of certain rates via Bieber, California, and the Portland gateway which resulted from the campaign initiated by complainant subsequent to its receipt of the Commission's order of August 2, 1962.

Such proposed evidence clearly cannot be characterized as newly discovered evidence. It is merely evidence created [fol. 690] by the complainant subsequent to the receipt of the adverse report and finally brought to the attention of the Commission almost six months thereafter.

If such a campaign as complainant has belatedly initiated has produced evidence which is material and relevant to the issues here presented, which defendants do not concede, no reason is shown why such a campaign could not have been initiated prior to the filing of the complaint herein or, at least, prior to the hearing. Manifestly, complainant has not met the requirement of Rule 1.101(e)—that good cause be shown for the extremely late filing of this petition. We submit that no cause has been shown, let alone good cause.

Due to the complainant's failure to show good cause for waiver of the rule in question, its petition for waiver of the rule must be denied.

II.

Complainant's Request for Further Hearing Not Justified

Assuming arguendo that complainant's petition seeking waiver of Rule 1.101(e) is granted, defendants submit that complainant's petition seeking a further hearing should be denied because of its patent failure to meet the twofold requirement of Rule 1.101(b), namely, that such evidence not be cumulative and that an explanation be given showing why such evidence was not previously adduced.

[fol. 691] The evidence in question, consisting of requests by certain shippers for publication of rates on certain commodities through Bieber, California, via the Portland gateway, produced as a result of complainant's intensive solicitation campaign initiated subsequent to the receipt of the Commission's report and order of August 2, 1962, is clearly cumulative.

Complainant initially alleged that defendants had violated both Sections 1(4) and 3(4) of the Act and sought an affirmative order from the Commission requiring the establishment of through routes and joint rates through Bieber, California, via the Portland gateway between the points involved. However, complainant finally abandoned its Section 1(4) allegation in its petition of August 29 for reconsideration of the report and order of Division 2 and we can, therefore, assume that complainant agrees with the report

and order of Division 2, that there is no public need for the sought routes and rates. Thus, the sole basis for complainant's petition for reconsideration which was denied by the Commission in its order of January 18, 1963, was an alleged violation of Section 3(4) of the Act.

In a futile effort to establish public need for the sought routes and joint rates, complainant presented the testimony of 15 shipper witnesses. It is readily apparent that the further evidence which complainant now proposes to adduce would be cumulative of that already presented at [fol. 692] the hearing in support of the Section 1(4) allegation which complainant has since abandoned. Such evidence would add nothing to the record and hence would be merely cumulative of evidence already of record.

With respect to the second requirement of Rule 1.101 (b), namely, an explanation of why such evidence had not been previously adduced, complainant has offered no explanation as to why evidence which it now seeks to introduce was not developed at an earlier date. Complainant frankly admits that the evidence is a result of an intensive campaign launched subsequent to the receipt of the Commision's report and order of August 2, 1962. No reason is given as to why such a campaign could not have been initiated prior to the hearing here in question. Obviously, complainant has failed to meet the second requirements of Rule 1.101(b).

The additional evidence which complainant now seeks to introduce is not relevant to the alleged Section 3(4) violation. The shipper testimony which complainant introduced at the hearing was presented in support of its Section 1(4) allegation in the expectation that it would establish the public need for the routes sought. The Division carefully considered such testimony and found it wanting. Complainant, by abandoning its Section 1(4) allegation in its petition for reconsideration now concurs with the Commission that public need does not require the establishment of the routes and rates here involved. Obviously, such additional [fol. 693] evidence would, in no way, support the essential

requirements of a Section 3(4) violation. Clearly, such evidence is not relevant to such a charge, as complainant virtually concedes in its petition for rehearing (p. 5).

However, even assuming that complainant's proposed evidence is not cumulative and could not have been previously produced and is relevant and material to the alleged Section 3(4) violation, it should still not be considered. Such requests will be promptly and fully considered by both the North Pacific Coast Freight Bureau and the Pacific South Coast Freight Bureau. We can assume that these rate bureaus will fully and carefully consider these inspired requests in accordance with their established procedures. Until they have fully considered these requests, it would be premature to even speculate as to the final action that they will take.

Complainant, by conceding in its petition for reconsideration an absence of public need for the routes which it initially sought pursuant to Section 1(4) of the Act, admits that the proposed evidence, even if adduced, would not and should not alter the ratio decidendi of the Division's report and order. Further, if this proceeding were reopened for the receipt of such evidence, it could not and should not be handled under modified procedure.

The granting of the instant petition would simply encourage protracted litigation to the detriment of all par- [fol. 694] ties and the overriding public interest. Obviously, if parties are entitled to a further hearing at any time without showing good and substantial cause why the Commission's rules should be waived as well as good and substantial cause for the rehearing itself, "there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening." *I.C.C.* v. *Jersey City,* 322 U. S. 503, 514 (1944).

Conclusion

Complainant apparently concedes that its belatedly manufactured evidence is not really material to a Section 3(4) proceeding. Notwithstanding this fact, it seeks to re-

open this proceeding for a further hearing solely to produce such evidence. We submit that complainant has wholly failed to show good cause for waiver of the Commission's 30-day rule for filing of such a petition as well as sufficient cause to warrant the reopening of this proceeding for a further hearing and that, therefore, both petitions should be denied.

Respectfully submitted,

Earl F. Requa, Frank S. Farrell.

Due Date: February 11, 1963.

[fol. 695] Certificate of Service (omitted in printing).

[fol. 697]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I.C.C. Docket No. 33679

[Title omitted]

REPLY OF DEFENDANT, UNION PACIFIC RAILROAD COMPANY, TO COMPLAINANT'S PETITION FOR WAIVER OF RULE 1.101(e) AND PETITION FOR FURTHER HEARING—Filed February 11, 1963

Comes now Union Pacific Railroad Company, defendant, and submits this reply to the complainant's petition for waiver of Rule 1.101(e) of the Commission's General Rules of Practice and also to the complainant's petition for further hearing.

Chronological Statement of the Case

The Western Pacific Railroad Company, and its wholly owned subsidiaries, filed a complaint on February 10, 1961, charging defendants, Union Pacific Railroad Company and Northern Pacific Railway Company, and their subsidiaries, with violations of Sections 1(4) and 3(4) of the Interstate Commerce Act. After the issues were joined by appro-

priate pleadings, including intervention of Southern Pacific Company, the complaint was heard before Examiner J. F. Wright in San Francisco, California, May 8-10, 1961. [fol. 698] Briefs were filed by the parties on July 10, 1961, and on August 10, 1961, the Examiner served his report and recommended order finding a violation of Section 3(4) of the Act. The defendants, Union Pacific and Northern Pacific, and intervenor, Southern Pacific, filed exceptions to the Examiner's proposed report and, after reply by the complainant, the Commission, Division 2, in a report dated July 26, 1962, and served August 2, 1962, found that there was no violation of the Interstate Commerce Act and ordered the complaint dismissed.

The complainant thereupon petitioned for reconsideration of the report and order of Division 2, replies were filed by the opposing parties, and on January 18, 1963, the petition for reconsideration was denied. There remain for disposition by the Commission the complainant's petition for waiver of Rule 1.101(e), the petition for further hearing and the petition seeking a finding that an issue of general transportation importance is involved.

I. Petitioner Has Not Shown Good Cause for Waiver of Rule 1.101(e).

This rule of the Commission's General Rules of Practice provides that any petition seeking a change in a decision or order of the Commission, whether for reconsideration, reargument, rehearing, further hearing, or otherwise, must be filed within 30 days after the date of service of the decision or order, *except for good cause shown and upon leave granted.*

Since the complainant is seeking a change in the order of Division 2, which was served August 2, 1962, by requesting [fol. 699] a further hearing, it has the burden of explaining why the petition was filed almost six months after the Commission order and almost five months after the time for filing the petition had expired. Its burden is particularly heavy in view of the fact that complainant had

no difficulty in filing its petition for reconsideration within the prescribed period.

In support of its request for a waiver of the time requirement the Western Pacific alleges that the evidence it now proposes to introduce "was not, and could not have been, developed prior to the present date" (p. 3, Petition for Waiver of Rule). No other reason, or good cause, is advanced to explain the failure to comply with the Commission's time requirement.

The proposed evidence is described in the petition for further hearing as constituting a number of formal shipper requests for publication of rates filed with the Pacific South Coast Freight Bureau and the North Pacific Coast Freight Bureau. The complainant characterizes these occurrences as "newly developed evidence" stating that the rate applications were instigated by the Western Pacific as a result of a campaign undertaken by it after service of the Commission's order of August 2, 1962. There is no reason why evidence of this nature could not have been developed at the inception of this proceeding, if the complainant had considered it of any materiality.

This is not newly discovered evidence. It is evidence manufactured by the Western Pacific after receipt of a [fol. 700] report adverse to it and now brought to the attention of the Commission almost six months after the report. The rule requiring that petitions seeking a change in a Commission order be filed within 30 days of service of the order is designed to bring some degree of finality to Commission proceedings. Its admirable purpose is frustrated if a party to a proceeding can bide its time, evaluate an adverse Commission report, wait out the period for reconsideration or rehearing and then request waiver of the time-for-filing rule by arguing that evidence newly created by it should be considered by the Commission.

The Western Pacific has not presented sufficient good cause to justify a waiver of Rule 1.101(e) and its petition for waiver of the rule should be denied.

II. Petitioner Has Not Justified Its Request for a Further Hearing.

If the Commission should waive Rule 1.101(e) and permit filing of Western Pacific's petition for further hearing it should deny the petition since there is no justification for a further hearing.

Rule 1.101(b) provides:

> "When in a petition filed under this section opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced."

The evidence the Western Pacific seeks to introduce fills none of the requirements of the rule—it is essentially cu- [fol. 701] mulative; it could have been adduced previously and it is not material to the issues raised in this proceeding. Even if the proposed evidence were introduced it would not be sufficient to bring about any change in the Commission's decision.

It is self-evident that the proposed evidence could have been adduced previously. The Western Pacific acknowledges that the formal shipper rate requests that have been filed with the Pacific South Coast and North Pacific Coast Freight Bureaus are the result of its agitation. The same activity could have been undertaken by the Western Pacific at the time it filed its complaint. It is strangely contradictory for the complainant to assert that it considers the proposed evidence of "questionable materiality" (p. 5, Petition for Further Hearing). This defendant is in agreement with complainant's evaluation of the proposed evidence, but this does not alter the complainant's obligation to develop and introduce at the appropriate time the evidence it intends to rely upon to establish its allegations.

The evidence is truly cumulative in that it reflects nothing more than shipper requests for rates over the Bieber route between California and the Pacific Northwest. Evidence

that a certain number of formal rate applications have been filed will add nothing to the testimony of shippers already in the record. The complainant has expressed satisfaction with the quantity and caliber of shipper support it has received, having characterized the 16 shipper witnesses as being traffic and executive representatives of some of the [fol. 702] most important industries in the Pacific Northwest (p. 36, Complainant's Reply to Exceptions). Proof that these same shippers and others like them have submitted rate applications to the appropriate rail rate bureaus would be merely cumulative of the evidence already on the record.

The evidence proposed to be introduced is both immaterial and irrelevant. While these words are often used interchangeably, "immaterial" denotes evidence offered to prove a proposition not in issue, while "irrelevant" denotes evidence which does not logically tend to establish any material proposition (*Hansson* v. *Catalytic Construction Company*, 127 A.2d 431, 434; 43 N. J. Super. 23).

(a) The fact that certain shippers have filed formal applications for rates over the Bieber route is immaterial to the determination of a Section 3(4) violation. This section of the Act pertains to discrimination between carriers, and the unavailability of a full line of joint rates over the Bieber route has already been established in the record.

(b) Even if evidence of shipper desire for rates over the Bieber route were material to resolution of a Section 3(4) issue the evidence proposed to be introduced is not relevant. The fact that a shipper rate application has been filed with a railroad rate bureau is not persuasive of an actual public need for the rate or for prescription of the route over which the rate would [fol. 703] apply. The rate applications will be decided by the rate bureaus under normal procedures and there can be no assumption that meritorious proposals will be denied. Mr. A. J. Stilling, Freight Traffic Manager of Union Pacific Railroad Company, has testified that

the Union Pacific intends to continue its past policy of giving serious consideration to the publication of joint rates over the Bieber route where there is a proved need for them in the public interest (R. 296).

It is actually misleading for the complainant to imply that the defendants have contended that the absence of formal shipper requests for publication of rates over the Bieber route is material to the determination of the Section 3(4) issue (pp. 5, 6, Complainant's Petition for Further Hearing). These allegations are based upon a statement on oral argument and to certain references to shipper rate applications in the report and order of Division 2, both relating to the Section 1(4) issue (Tr. 499, 500 and shs. 13, 23, Report and Order of Division 2).

At the outset of the Discussion and Conclusions section of the report, Division 2 observed that "The complainants rely primarily on the alleged violation of section 3(4) of the act." (sh. 19) This is undisputed. Although the Western Pacific initially alleged violations of Sections 1(4) and 3(4) of the Act in its complaint, little emphasis was placed on the [fol. 704] Section 1(4) issue and the gradual de-emphasis of this allegation ripened into outright abandonment following the report and order of Division 2.

Section 3(4), insofar as it is material to this case, provides that carriers shall not discriminate in their rates, fares and charges between connecting lines. The Commission discussed the elements of a Section 3(4) violation and culminated with the finding that the carriers are not connecting lines and that the evidence did not establish the similarity of circumstances and conditions which justify equality of treatment (sh. 22). In its ultimate conclusion the Commission found that the refusal of the defendants to establish through routes and joint rates as requested by the complainant was not shown to be unjust and unreasonable nor to result in discrimination in violation of Section 3(4) of the Act (sh. 24). In its discussion of the Section 3(4) issue the Commission did not mention formal shipper rate

applications or the existence of shipper support for the prescription of new rates and routes via Bieber.

However, the Commission observed that while the complainants have indicated a willingness to rely alone on the alleged violation of Section 3(4) they also alleged other violations and request the prescription of through routes and joint rates over the route sought (sh. 22). Accordingly the Commission proceeded to consider the evidence material to Section 1(4) and discussed at length the shipper evidence introduced by the complainant (shs. 9-13). In this connection the Division mentioned and considered the proof [fol. 705] of formal shipper rate applications. After full consideration of the evidence going to Section 1(4) and dealing also with the implementing provisions of the Act, Sections 15(3) and 15(4), the Commission concluded that the establishment of through routes and joint rates in connection with the complainants through Bieber and Portland was not shown to be necessary or desirable in the public interest (sh. 24).

Subsequent to the report and order of the Commission the Western Pacific unequivocally abandoned its Section 1(4) allegation, stating in its petition for reconsideration that "The Section 1(4) allegations have been abandoned" (p. 25) and "Now that this case has been reduced to the Section 3(4) case * * *" (p. 24). With this limitation of issues the proposed evidence of formal shipper rate applications is plainly not material and the Western Pacific cannot be prejudiced by a denial of its request for a further hearing.

In one of its early decisions, in *Whiteland Canning Co. v. P., C., C. & St. L. Ry. Co.*, 23 I.C.C. 92, the Commission made some sensible comments on the subject of rehearings, and those observations remain sound enough for application here.

> "The petition does not show how the above evidence, if introduced, would alter the conclusion already reached, and still less does it indicate any reason for not having introduced this testimony upon the first hearing. When full opportunity for hearing has been

> accorded carriers must show as ground for a rehearing that the evidence which they now offer either could not or ought not to have been introduced upon the first hearing, and also that this evidence, if introduced, [fol. 706] would probably lead to a reversal of our previous conclusion. It is no hardship to require carriers in the trial of their cases before this Commission to observe to a very moderate degree the same rules which would obtain in a trial at law. Whenever this Commission is convinced that its order works substantial injustice it will unhesitatingly set aside that order, but we cannot continually retry these cases upon the mere statement of the carrier that it desires to introduce some further testimony and believes that the decision of the Commission is wrong." (p. 94)

See also *National Radiator Corp.* v. *Pennsylvania R. Co.*, 203 I.C.C. 172, 173.

III. Granting Petitioner's Request for a Further Hearing Will Encourage Protracted Litigation Before the Commission.

The Western Pacific framed the issues in its complaint to its own satisfaction, received a full hearing and accepted a favorable Examiner's report. After receipt of an adverse Commission decision the complainant then initiated a campaign designed to persuade shippers to file formal rate applications before rail rate bureaus and thus created the evidence it now seeks to have admitted in this proceeding.

While this defendant recognizes and endorses the Commission obligation to develop a complete record in proceedings before it, the interests of administrative justice are not served if tactics such as this are rewarded. Parties before the Commission will find it expedient to hold back the submission of borderline evidence—especially if that evidence may cut both for and against the party—gamble on a favorable outcome, and then proceed to patch up its case [fol. 707] by the generation of additional evidence to be submitted at a further hearing if the final Commission decision goes against it.

An allegation of prejudice by denial of its petition would receive little sympathy from the courts under these circumstances. In an opinion liberally supported by decisions of the Supreme Court, the Federal district court in *Illinois Cent. R. Co.* v. *United States,* 101 F. Supp. 317, declared:

> "'Though the order substantially reduced the carriers' revenues, we do not consider the merits of the application for rehearing, as we think the carriers' lack of diligence in bringing this matter to the Commission's attention deprived them of any equity to complain of the refusal of their petition. They sat silent and took the chance of a favorable decision on the record as made. They should not be permitted to reopen the case for the introduction of evidence long available and susceptible of production months before the Commission acted. The denial of a rehearing, in view of this delay, was not such an abuse of discretion as would warrant setting aside the order.'" (p. 326)

Conclusion

The record is closed and with denial of complainant's petition for reconsideration the Commission has spoken with administrative finality. The complainant has not shown good cause for waiver of the Commission's time-for-filing requirement nor has it shown sufficient justification for an order reopening this proceeding for further hearing. [fol. 708] The petition for waiver of Rule 1.101(e) and the petition for further hearing should be denied.

Respectfully submitted,

H. E. Roos, John J. Burchell, William P. Higgins, Attorneys for Union Pacific Railroad Company, Defendant.

Due Date: February 11, 1963.

1416 Dodge Street, Omaha, Nebraska.

Certificate of Service (omitted in printing).

[fol. 710]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

REPLY OF INTERVENER SOUTHERN PACIFIC COMPANY TO COMPLAINANTS' PETITION FOR WAIVER OF RULE 1.101(e) AND PETITION FOR FURTHER HEARING—Filed February 11, 1963

Comes now intervener Southern Pacific Company and replies to complainants' petition for waiver of Rule 1.101(e) of the Interstate Commerce Commission's General Rules of Practice and to complainants' petition for further hearing.

Preliminary Statement

This proceeding was commenced on February 10, 1961, with the filing of a complaint by Western Pacific Railroad Company and its wholly-owned subsidiaries, charging that Union Pacific Railroad Company and Northern Pacific Railway Company had violated sections 1(4) and 3(4) of the Interstate Commerce Act. Hearings were held in San Francisco, Calif., from May 8 to 10, 1961. Briefs were thereafter filed, and on August 10, 1961, the examiner's recommended report and order was served. Said report [fol. 711] and order recommended that the Commission find a violation of section 3(4) of the Act. Thereafter exceptions to said proposed report were taken and replies were made. Division 2 of the Commission, in a report and order served August 2, 1962, found no violation of the Interstate Commerce Act and ordered the complaint dismissed. Complainants filed a petition for reconsideration of the report and order of Division 2, and, after replies were filed by defendants and intervener Southern Pacific Company, said petition for reconsideration was denied on January 18, 1963. Complainants have now filed a petition

for waiver of the provisions of Rule 1.101(e) of the Commission's General Rules of Practice so that they may file a petition for further hearing.

Complainants' Petition for Waiver of the Provisions of Rule 1.101(e) of the Commission's General Rules of Practice Should Be Denied

Rule 1.101(e) of the General Rules of Practice requires that, *except for good cause shown* and upon leave granted, petitions (in this case for further hearing) must be filed within thirty days after the date of service of a decision or order. In this proceeding said thirty-day period expired on September 4, 1962, five months ago. As a showing for good cause, complainants claim that there is "newly developed evidence" and that this evidence was not and could not have been developed prior to the present date (Petn. for Waiver of Rule 1.101(e), p. 3). The evidence that complainants allude to is the filing and docketing with Pacific South Coast Freight Bureau and North Pacific Coast Freight Bureau of requests for voluntary publication of [fol. 712] rates via the Bieber route on a level competitive with Southern Pacific via Portland. Complainants also allege that more such requests are being prepared and will be docketed or filed for docketing in the near future.

Complainants' characterization of this evidence as "newly developed" is directly refuted by their own statement that Western Pacific *launched* the campaign to have these requests filed (Petn. for Further Hearing, p. 2). Under these circumstances, it is not "newly developed evidence"; it is newly *manufactured* evidence. If newly manufactured evidence is to constitute a showing of good cause under Rule 1.101(e), it will mean that litigants in Interstate Commerce Commission proceedings will wait until after service of a decision or order and then proceed to manufacture evidence to bolster or complete their case. It is submitted that such a result is not desirable, and indeed would only serve to prolong already lengthy Commission proceedings.

Complainants have failed to show good cause, and their petition for waiver of the provisions of Rule 1.101(e) of the Commission's General Rules of Practice should be denied.

Complainants' Petition for Further Hearing Should Be Denied

If the Commission should waive the provisions of Rule 1.101(e) and allow complainants to file their petition for further hearing, said petition should be denied because complainants have failed to make a proper showing under Rule 1.101(b). Rule 1.101(b) states:

> [fol. 713] "When in a petition filed under this section opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced."

1. Complainants have not explained why such evidence was not previously adduced.

Complainants have completely failed to make any showing as to why the evidence they now seek to introduce could not have been obtained prior to or during the hearings in this case. Complainants freely admit that they alone are responsible for the launching of a campaign to have these formal requests filed and they make no explanation as to why it was not available at an earlier date, except the bland statement that "it was not in existence until now" (Petn. for Further Hearing, p. 5). As the court stated in *United States* v. *Northern Pac. Ry.*, 288 U.S. 490, 494 (1933):

> "Though the order substantially reduced the carriers' revenues, we do not consider the merits of the application for rehearing, as we think the carriers' lack of diligence in bringing this matter to the Commission's attention deprived them of any equity to

complain of the refusal of their petition. *They sat silent and took the chance of a favorable decision on the record as made.* They should not be permitted to reopen the case for the introduction of evidence long available and susceptible of production months before the Commission acted." (Emphasis added.)

So, also, in *Goss* v. *Director General,* 58 I.C.C. 169, 173 (1920) the Commission said:

> "In its brief on exceptions complainants request that the case be reopened for the purpose of enabling evidence to be presented as to the reasonableness of the Auburn rates via the Lackawanna-New York Central Lines. Ample opportunity was given complainants to present such evidence when the record in this case was made, and the request is therefore denied."

[fol. 714] It is submitted that complainants have utterly failed to explain why such evidence was not previously adduced.

2. The evidence sought to be introduced is cumulative and immaterial to the issues

Complainants have previously called a number of shippers to testify upon the record. Intervener Southern Pacific Company fails to see how proof by these same shippers or by other shippers that they have submitted rate applications to rail bureaus would add anything to the record as already developed. To the contrary, such additional evidence would be merely cumulative. As was stated in *Public Service Comm'n of Nevada* v. *Southern Pac. Co.,* 211 I.C.C. 567, 568 (1935):

> ". . . On exceptions intervener seeks further hearing to enable it to renew and amplify its evidence to show the highly profitable character of the rates assailed. There is no showing that the nature and purpose of the evidence to be adduced is not merely cumulative, and the request is denied."

Furthermore, complainants, in their petition for reconsideration, have stated at page 25 that "The section 1(4) allegations have been abandoned"; yet complainants now seek a further hearing to introduce "newly developed" evidence which is material only to a violation of section 1(4). Even complainants agree that in connection with a violation of section 3(4) the question of whether there have been formal shipper requests for the publication of rates is at least of questionable materiality (Petn. for Further Hearing, p. 5).

Under these circumstances, it is submitted that the evidence proposed to be introduced at a further hearing is [fol. 715] cumulative and is immaterial to a violation of section 3(4).

The language of the Commission in *Cattle Raisers Assn. v. Chicago, B. & Q. R.R.*, 12 I.C.C. 6 (1906), is appropriate to this proceeding. In that case the Commission said:

> "... We feel that when an order has been made the case before this Commission should be treated as closed, and that it ought not to be opened except upon a showing that some wrong or injustice has been or will be effected."

Complainants have failed to show that under Rule 1.101 (b) they are entitled to a further hearing.

Complainants' Request for Modified-Procedure Handling

Intervener Southern Pacific Company objects to complainants' request that further hearings take place by way of modified procedure.

Conclusion

Complainants have failed to show good cause for the waiver of Rule 1.101(e); nor have complainants shown sufficient justification for an order directing a further hearing in this proceeding. Complainants' petition for waiver

of Rule 1.101(e) and complainants' petition for further hearing should be denied.

Respectfully submitted,

Thormund A. Miller, Charles W. Burkett, Jr., W. Harney Wilson, Attorneys for Intervener, Southern Pacific Company.

San Francisco, Calif., February 8, 1963.

[fol. 716] Certificate of Service (omitted in printing).

[fol. 717]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Service Date
February 20, 1963

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C.

No. 33679

WESTERN PACIFIC RAILROAD COMPANY et al.,

v.

CAMAS PRAIRIE RAILROAD COMPANY et al.

ORDER—February 14, 1963

Upon consideration of the record in the above-entitled proceeding, the report and order of the Commission, Division 2, decided July 26, 1962, and petition, filed January 30, 1963, of complainants seeking a finding that an issue of general transportation importance is involved herein; and for good cause:

It is ordered, That the petition be, and it is hereby, granted, and that this proceeding is hereby designated as

one involving an issue of general transportation importance.

It is further ordered, That petitions for reconsideration in this proceeding may be filed within 30 days after the date of service of this order and replies thereto within 20 days after the final date for filing such petitions.

By the Commission.

Harold D. McCoy, Secretary.

(Seal)

[fol. 719]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

COMPLAINANTS' PETITION TO THE FULL COMMISSION FOR RECONSIDERATION OF THE REPORT AND ORDER OF DIVISION 2 AND COMPLAINANTS' REQUEST FOR ORAL ARGUMENT BEFORE THE FULL COMMISSION—Served March 19, 1963

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

Due Date: March 22, 1963.

* * * * * * *

[fol. 720] Statement of Position

The primary question to be determined at the outset, however, is whether Western is a "connecting line" as that term is used in Section 3 (4). Such a term was, and is, intended to have full application to those carriers who are an integral part of a through route initially authorized, and at all times operated for all practical effects as a single line of railroad. Such a route is the Bieber route which does have a physical connection with defendants. Thus, even a finding that physical connection is necessary in order to invoke the provisions of Section 3 (4) must result

in the further finding that Western Pacific fully meets that requirement.

The Examiner properly held that, all of the facilities which have been used by defendants in the handling of cast iron pipe (moved in substantial quantities over the Bieber route through Portland to its connection with defendants) are the same facilities that would be utilized should the Bieber route be opened commercially to all other classes of traffic moving to points on the lines of defendants.* Thus, while the through rates on pipe thus established are apparently not broad enough under the doctrine of the *Thompson*** case to make the action of defendants in establishing such rates a general holding out to the public *under other sections of the Act* (a point not disputed by complainants who are here trying to remedy that problem), they do demonstrate the absolute and complete feasibility of the Bieber [fol. 721] route's ability to provide a fully satisfactory operation in conjunction with defendants.

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[fol. 722] The economic benefits inherent in opening these routes to a full utilization can perhaps be best visualized by a brief recitation of a representative situation existent under the present system. A shipper at Seattle, Washington, can *physically* move his cars over the Bieber route in conjunction with Great Northern, Union Pacific or Northern Pacific. He can *economically* route a car over the Bieber Gateway only if neither Union Pacific nor Northern Pacific is shown in the routing.

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[fol. 722a]

Western Pacific Is a "Connecting Line" Entitled to Invoke the Provisions of Section 3 (4)

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* Sheet 5 of Hearing Examiner Wright's Report.

** *Thompson* v. *United States*, 343 U.S. 549.

[fol. 723] It is clear that except for a very limited line of commodities, defendants have refused to establish through routes and rates with Western Pacific. This is a situation Western Pacific desires to remedy through this complaint. The law would surely make little sense, or serve little purpose, if it were interpreted in such manner as to be unavailable in the case of refusal to establish through rates on any basis, yet available where the *level* of established through rates were challenged.

• • • • • • •

[fol. 723a]

Separation of Issues and Evidence as They Apply to the Several Territories in the Pacific Northwest

• • • • • • •

[fol. 724] Since the traffic could physically have been directed north and east as soon as it reached Wishram, it is possible that Division 2 felt that this amounted to wasteful transportation. Defendants are no more prejudiced by such operation than they are when they interchange with Southern Pacific, but complainants are compelled to recognize certain factors that might have disturbed the Division with regard to the traffic moving to or from those points *east of the Cascades served by Great Northern.*

The selfish interest of Western Pacific would be served if the nondiscriminatory rates here sought were to be established via Wishram as that route is obviously shorter than the Portland route. However, the decision to seek the relief in this proceeding via Portland, rather than Wishram, rests upon the present state of law rather than the selfish interest of Western Pacific. In order to prove or establish [fol. 725] a Section 3 (4) case, we simply had to go the point through which the defendants connect with both competitive lines—this is Portland. Southern Pacific does not reach Wishram and there is no factual condition which would possibly allow Western to establish a discrimination case through Wishram. A Section 1 (4) case to force Great Northern to interchange with the other defendants at Wish-

ram, would be obviously an impossibility in view of the precise Section 15 (4) limitations against compulsory short hauling. To obtain protection of the law, therefore, Western had to ask nondiscriminatory rates via Portland rather than Wishram even as to traffic moving to or from points east of the Cascades served by Great Northern.

* * * * * * *

[fol. 725a] Conclusion

* * * * * * *

[fol. 726] While the relief sought is justified, under the law and the prevailing fact situation, to and from the territory both east and west of the Cascades, the evidence does not allow the blanketing effect heretofore given it. Complainants' clearest case has been made as to the discrimination which denies access to the total territory west of the Cascades and to that vast area east of the Cascades not served by Great Northern. Those situations cannot be prejudiced by any peripheral issues which tend to cloud the situation applying with regard to the limited eastern territory served by Great Northern via Wishram.

* * * * * * *

Complainants must realistically approach the Commission with the acknowledgment of the Division's apparent [fol. 727] reluctance to abate this discrimination insofar as it is practiced on traffic directly competitive with that moved by Great Northern via Wishram. While the legal principles are the same in each situation (*all* traffic competitive with Great Northern moves through Portland now) there may be some reluctance to force defendants to open these routes via Portland while their competitor moves through Wishram. However, this applies *only* in connection with traffic directly competitive with Great Northern east of the Cascades.*

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* Appendix A circles the major points served by Great Northern east of the Cascades.

As to traffic west of the Cascades and that vast area east thereof not served by Great Northern this situation cannot legitimately be held to prevail, and Great Northern would not be gaining any competitive advantage by a commercial opening of the routes. The situations, therefore, must be separately considered and determined on the facts and equities applicable thereto.

The Commission could issue its order herein ordering the discrimination to cease and desist as to all territory west of the Cascades, and all territory east thereof not served by Great Northern, and thereby provide the Northwest with truly competitive rail service, while denying such relief to that territory east of the Cascades served direct by Great Northern.

Such a result would surely remove from defendants any realistic fears about their ability to compete with traffic moved via Wishram. That limited traffic would, of course, still be deprived of the benefit of competitive service, but if that sacrifice is necessary to enable the manifold benefits [fol. 728] of competitive service to reach all other traffic then it is a worthy one indeed.

* * * * * * *

Requested Findings

It is respectfully requested that the Full Commission reverse the decision of Division 2 herein, and enter the following specific findings:

1. The Western Pacific, as an integral segment of the Bieber route, is a line which connects with defendants Northern Pacific and Union Pacific at Portland, Oregon.

2. Southern Pacific also connects with defendants Northern Pacific and Union Pacific at Portland, Oregon.

3. Western Pacific and Southern Pacific are directly competitive on railroad traffic moving between the

[fol. 729] State of California on the one hand and the States of Oregon, Washington and western Idaho on the other.

4. Defendants Union Pacific and Northern Pacific presently join Southern Pacific, and its connections excluding Western Pacific in a full line of joint through rates on traffic moving between California and Oregon, Washington and western Idaho and refuse, except in extremely limited circumstances, to join Western Pacific, and its connections, in a competitive full line of joint through rates on the same traffic.

5. The conditions affecting the handling by defendant Northern Pacific of traffic moving through the Portland Gateway to or from that territory located *west* of the Cascade Mountains, are materially and substantially similar whether the traffic be interchanged at Portland with Southern Pacific or the Bieber route.

6. The conditions affecting the handling by defendant Northern Pacific of traffic moving through the Portland Gateway to or from that territory located *east* of the Cascade Mountains, not reached by the direct service of Great Northern, are materially and substantially similar whether the traffic be interchanged at Portland with Southern Pacific or the Bieber route.

7. The conditions affecting the handling by defendant Union Pacific of traffic moving through the Portland Gateway to or from that territory located *west* of [fol. 730] the Cascade Mountains, are materially and substantially similar whether the traffic be interchanged at Portland with Southern Pacific or the Bieber route.

8. The conditions affecting the handling by defendant Union Pacific of traffic moving through the Portland Gateway to or from that territory located *east* of the

Cascade Mountains, not reached by the direct service of Great Northern, are materially and substantially similar whether the traffic be interchanged at Portland with Southern Pacific or the Bieber route.

9. That defendant Northern Pacific has practiced and continues to practice unlawful discrimination against complainant Western Pacific in violation of Sec. 3 (4) by virtue of its failure and refusal to join said complainant in the publication of through rates to or from the territory *west* of the Cascade Mountains on the same level and basis as said defendant presently maintains in connection with Southern Pacific Company in the same territory.

10. That defendant Northern Pacific has practiced and continues to practice unlawful discrimination against complainant Western Pacific in violation of Section 3 (4) by virtue of its failure and refusal to join said complainant in the publication of through rates to or from the territory *east* of the Cascade Mountains, not reached by the direct service of Great Northern, on the same level and basis as said defen- [fol. 731] dant presently maintains in connection with Southern Pacific Company in the same territory.

11. That defendant Union Pacific has practiced and continues to practice unlawful discrimination against complainant Western Pacific in violation of Section 3 (4) by virtue of its failure and refusal to join said complainant in the publication of through rates to or from the territory *west* of the Cascade Mountains on the same level and basis as said defendant presently maintains in connection with Southern Pacific Company in the same territory.

12. That defendant Union Pacific has practiced, and continues to practice unlawful discrimination against complainant Western Pacific in violation of Section

3 (4) by virtue of its failure and refusal to join said complainant in the publication of through rates to or from the territory *east* of the Cascade Mountains, not reached by the direct service of Great Northern, on the same level and basis as said defendant presently maintains in connection with Southern Pacific Company in the same territory.

13. That practices here complained of have caused complainant to suffer irreparable injury and have enabled complainant's principal competitor to enjoy an unwarranted, unfair and unlawful competitive advantage.

14. That defendant Northern Pacific be ordered to cease and desist from its present practice of unlawfully discriminating in the level of rates which it makes [fol. 732] available to the Southern Pacific Company, and the Bieber route via Portland to and from points on its lines located *west* of the Cascade Mountains in the States of Oregon and Washington.

15. That defendant Northern Pacific be ordered to cease and desist from its present practice of unlawfully discriminating in the level of rates which it makes available to the Southern Pacific Company, and the Bieber route via Portland to and from points on its lines located *east* of the Cascade Mountains, not reached by the direct service of Great Northern, in the States of Oregon, Washington, and western Idaho.

16. That defendant Union Pacific be ordered to cease and desist from its present practice of unlawfully discriminating in the level of rates which it makes available to the Southern Pacific Company, and the Bieber route via Portland to and from points on its lines located *west* of the Cascade Mountains in the States of Oregon and Washington.

17. That defendant Union Pacific be ordered to cease and desist from its present practice of unlawfully discriminating in the level of rates which it makes available to the Southern Pacific Company, and the Bieber route via Portland to and from points on its lines located *east* of the Cascade Mountains, not [fol. 733] reached by the direct service of Great Northern, in the States of Oregon, Washington, and western Idaho.

Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 734] Certificate of Service (omitted in printing).

[fol. 735]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

PETITION OF UNITED STATES FOR LEAVE TO INTERVENE FOR THE PURPOSE OF PETITIONING THE FULL COMMISSION FOR RECONSIDERATION OF THE REPORT AND ORDER OF DIVISION 2 AND TO BE HEARD ON ORAL ARGUMENT—Filed July 26, 1963

Comes now the petitioner, United States of America, through Department of Justice, and respectfully represents that it has an interest in the matters presented in the above-entitled proceeding and desires to intervene in and become a party to said proceeding for the purpose of petitioning the full Commission for reconsideration of the Report and Order of Division 2 and for the purpose of being heard on oral argument herein, if the same should be granted; that good cause exists for the granting of the intervention sought; and that, if leave to intervene is

granted petitioner, no broadening of the issues will thereby result. In support whereof petitioner further states as follows:

[fol. 736] 1. That petitioner had no knowledge of this proceeding, a private proceeding upon complaint between private persons, until the same was brought to its attention following the Commission's determination and announcement that it involves an issue of general transportation importance.

2. That the position of petitioner is in support of the relief sought by complainant, Western Pacific Railroad Company, under section 3(4) of the Interstate Commerce Act.

3. That the United States has a direct interest, in its sovereign capacity as well as that of shipper, in the preservation of competition to the extent necessary to assure the sound development of a transportation system by railroad properly adapted to the needs of the commerce of the United States, of the postal service, and of the national defense; and in the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices.

4. That the Report and Order of Division 2 would perpetuate, by finding the Commission to be lacking in power to correct, a monopoly position enjoyed by intervenor, Southern Pacific Railroad Company, through the actions of the principal defendants Northern Pacific Railway Company and Union Pacific Railroad Company, in rail transportation between points in California and points on the defendants' lines in the Pacific Northwestern States of Oregon, Washington, and Idaho, via the Portland gate-[fol. 737] way, in that the said Report and Order specify, as the reason the discrimination cannot be eliminated and the monopoly broken, the very device which has made this monopoly position possible, namely, defendants' long-standing refusal to accord to Western Pacific and its connecting lines the same basis and level of rates via the Portland gateway as they accord intervenor Southern Pacific.

5. The petitioner, for the reasons set out in its accompanying petition to the full Commission for reconsideration of the Report and Order of Division 2, believes that the grounds which Division 2 advanced to support this result are erroneous, would frustrate preservation of competition to the end of sound development of a transportation system by railroad adapted to the needs of commerce and the postal service and national defense, and would, contrary to the policy of section 3(4), prevent the establishment and maintenance of reasonable charges for transportation, free of unjust discriminations, undue preferences or advantages, and unfair and destructive competitive practices; and believes that it is therefore essential that the full Commission reconsider said Report and Order.

6. That petitioner is advised that following issuance of said Report and Order, which, *inter alia,* suggested that there is no substantial shipper interest in the relief sought, over 100 requests have been filed with the carrier freight rate bureaus seeking voluntary publication of rates to [fol. 738] apply over the Bieber route via Portland, Oregon, to and from points on the lines of defendants Northern Pacific Railway Company and Union Pacific Railroad Company north and east of Portland.

7. That insofar as petitioner can ascertain the Commission has not previously passed upon the principal ground on which Division 2 has based its decision, namely, that a carrier by railroad is not a "connecting line" of another which it reaches via an intermediate carrier, within the meaning of section 3(4) of the Act, unless there is in effect a "through route" between such carrier by railroad and the carrier it reaches via the intermediate line.

8. That the accompanying petition to the full Commission for reconsideration of the Report and Order of Division 2 is addressed solely to the issues framed by the Report and Order and does not in any way broaden them.

Wherefore, the United States of America requests leave to intervene and be treated as a party hereto, and to file the accompanying petition to the full Commission for recon-

sideration of the Report and Order of Division 2, and, in the event the Commission grants oral argument, to be heard at such oral argument.

John H. Dougherty, Attorney, Department of Justice;

Robert L. Wright, Acting Assistant Attorney General, Department of Justice;

Joseph J. Saunders, Attorney, Department of Justice.

July 26, 1963

[fol. 739] Certificate of Service (omitted in printing).

[fol. 740]
[Handwritten notation—Received July 26th. See Order of 8/9/63]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

PETITION OF UNITED STATES TO FULL COMMISSION FOR RECONSIDERATION OF REPORT AND ORDER OF DIVISION 2 AND REQUEST OF UNITED STATES FOR ORAL ARGUMENT BEFORE FULL COMMISSION—Filed July 26, 1963

The Report and Order of Division 2 herein served August 2, 1962, deny complainant Western Pacific Railroad Company relief under section 3(4) of the Interstate Commerce Act against the practice of the principal defendants Northern Pacific Railway Company and Union Pacific Railroad Company of withholding from Western Pacific joint rates to apply between points in California served by Western Pacific or in connection with the Atchison, Topeka & Santa Fe Railway Company, via the Portland gateway, and points on the lines of those defendants in Oregon, Washington and Idaho, on the same basis as those defendants maintain via Portland in connection with intervenor

Southern Pacific Company. Thus they condone an anti-competitive practice which has existed since the opening [fol. 741] in 1931 of the Bieber route, composed of the lines of Western Pacific, the Santa Fe to the south, and Great Northern Railway Company to the north, of which the Commission authorized construction in *Great Northern Railway Company Construction,* 166 I.C.C. 3, in the stated expectation that the new inside gateway would be competitive with Southern Pacific between San Francisco and Portland, and frustrate that expectation by barring competition between Western Pacific and Southern Pacific for traffic moving between California at a Bieber route origin or destination and points on the lines of these defendants in the Pacific Northwest. The defendants' joint rates with Southern Pacific are in virtually all instances lower than the combination rates which apply when they or Southern Pacific participate in a routing with Western Pacific via the Bieber route to or from these points on their lines.

Except as to traffic between California and Great Northern points east of the Cascade Mountains, which the Bieber route can move faster and more directly via Wishram, Washington, the repressive influence of this decision extends throughout a great area of the West. The Northwest area involved is that north of the Portland interchange and includes important points such as Bellingham, Everett, Seattle, Tacoma, Olympia, and Longview, as well as others, and the area east of the Cascade Mountains which includes points north and east of Wishram such as Yakima, Walla Walla, Spokane, and numerous others. As Division 2 recog- [fol. 742] nizes, the Pacific Northwest and California have rapidly increased in population, consumption and production and are expected to continue to grow. There is testimony that through routes between defendants and the Bieber route and rates at the same level as those defendants maintain with Southern Pacific would materially assist in the greater industrial development of the Pacific Northwest, provide for a greater and more complete competitive rail system, and generally assist in the economic growth of the whole area. Division 2, which cites this testimony, does not dispute it. Likewise, to shipper urgings that such routes and rates would give them more freedom of choice in the movement of their goods, would improve

transportation service, time in transit and car supply, and make available additional transit privileges, Division 2's response is only that nothing of record indicates that the existing through routes and joint rates are inadequate to meet the needs of the shipping public. It found corroboration in the failure by shipper witnesses for 31 years to initiate a determined campaign for the routes and rates sought. Even the latter observation is no longer valid; since the Report and Order were issued, there have been over 100 requests from shippers filed with the carrier rate bureaus for voluntary publication of the rates Western Pacific seeks to force through its complaint.

The concern of the United States is as much with the method by which Division 2 arrived at this unfortunate result as with the result itself. For Division 2 never really [fol. 743] reached the merits, and they urgently require the most careful consideration. The principal obstacle Division 2 placed in the way of the complaint is the first and most important point it decided, namely, that Western Pacific is not a "connecting line" of the defendants within the meaning of section 3(4) of the Interstate Commerce Act and is therefore without standing to complain of the discrimination in rates which Division 2 freely finds defendants have practiced against Western Pacific in order to keep the Bieber route commercially closed. The method employed, that of piecing together selected portions of judicial decisions, each sound in its own setting but having no relation to one another, has already been rejected as a justification of rate discriminations practiced by rail carriers against water carriers, but appears not to have been considered in a complaint by one rail carrier against another. Since it achieves an artificial distortion of section 3(4) which would advance the very kind of monopolistic combination that section has long been recognized as prohibiting, petitioner believes it to be of utmost importance that the full Commission reconsider the Report and Order.

Again, on the contrary assumption that section 3(4) is applicable, "Division 2 has held that the circumstances and conditions are dissimilar, so that the admitted discrimination is justified. In so doing it adopted a rule of measurement, a comparison of the relative physical features of the Bieber route and the Southern Pacific route

[fol. 744] between California and Portland, which should be left for the shipping public to judge under freedom of selection which it thereby foreclosed."

Finally, Division 2 chose to ignore Western Pacific's reliance solely upon section 3(4) and treated the case as if it were still being asked to prescribe through routes with the result that it gratuitously found relief foreclosed under the short-haul restriction in section 15(4) of the Act by the same short-haul defendants have seen fit to submit to voluntarily in connection with Southern Pacific.

Petitioner sets out in succeeding sections of this petition its reasons for believing that Division 2 erred in each of these three findings and that each should receive full reconsideration by the full Commission.

[fol. 745]

I

The Commission should find Western Pacific is a "connecting line" of the defendants

The *fact* which has led Division 2 to conclude that Western Pacific is not a "connecting line" which can complain under section 3 (4) against defendants' withholding of joint rates via Portland on the same basis and level as they have always extended to Southern Pacific is the withholding itself. *Chicago, I. & L. Ry.* v. *United States,* 270 U.S. 287, is decisive that the *fact* that defendants have always shunned any arrangement for a through transportation service jointly with Western Pacific cannot deprive Western Pacific of standing under section 3 (4) as a "connecting line." There all four respondents had arrangements for reciprocal switching with each other but three of them refused to switch reciprocally with the complainant electric line—just as defendants here refuse to make joint rates with Western Pacific. The complainant had a physical connection only with the first respondent, with whom it had already obtained reciprocal switching arrangements, and not with the three others, whose lines its cars could reach only by passing over the line of the first defendant—just as Western Pacific reaches defendants here only over the line of the Great Northern. Nevertheless, the court held these respondents had violated their duty under section 3

(4) to afford equal facilities for interchange of traffic with [fol. 746] "connecting lines." In so doing it noted specifically that "no joint service is being rendered by the three steam railroads with the South Shore"—just as no joint rates are now in effect between defendants and Western Pacific.

The *legal* process by which Division 2 reached the conclusion that Western Pacific was not a "connecting line" of the defendants took as its point of departure a quotation from *Atlantic Coast Lines* v. *United States,* 284 U.S. 288 (at page 293): "There is no warrant for limiting the meaning of 'connecting lines' to those having a direct physical connection with the Clinchfield. The term is commonly used as referring to all the lines making up a *through route.*" [Emphasis supplied] From this quotation Division 2 concluded that since it was the Great Northern and not the Western Pacific which physically connected with the defendants at Portland, Western Pacific could be a "connecting line" of the defendants only if Western Pacific and the Great Northern *and* the lines of the defendants north and east of Portland *together* constituted "through routes." It then took a quotation from *Thompson* v. *United* [fol. 747] *States,* 343 U.S. 549,[1] as determinative of whether such a through route existed between the Bieber Route and the defendants. The portion of this quotation (at page 557)

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[1] This quotation was as follows (the indented portion being from the Commission's 21st Annual Report to Congress):

". . . Existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and division of transportation charges, or the use of a proportional rate to or from junction points or basing points. These incidents named are not to be regarded as exclusive of others which may tend to establish a carrier's course of business with respect to through shipments.

"In short, the test of an existence of a through route is whether the participating carriers hold themselves out as offering through transportation service. Through carriage implies the existence of a through route whatever the form of the rates charged for the through service." [343 U.S. at p. 557].

which it treated as decisive states that the test of the existence of a "through route" is "whether the participating carriers *hold themselves out* as offering through transportation service." [Emphasis added]

This reasoning fore-ordained Division 2's conclusion. For the defendants had never held themselves out to offer through transportation with the Western Pacific; their refusal to do so and preference of Western Pacific's competitor, Southern Pacific, is precisely Western Pacific's complaint. The very few joint rates in existence were forced on the defendants in two of the four cases in which they came into being and by Commission decree in the other two. Of these joint rates only the rate on pipe had ever been used, and only an exceedingly small quantity of pipe traffic had moved under that rate. Even less traffic had moved under combination rates. All such traffic was an insignificant portion of the whole. Finding that, as in *Beaman Elevator Co.* v. *Chicago & Northwestern Ry. Co.*, [fol. 748] 155 I.C.C. 313; *Denver & R. & W. R. Co.* v. *Union Pacific R. Co.*, 351 U.S. 321; and *Chicago, M., St. P. & P. R. Co.* v. *Spokane, P. & S. Ry. Co.*, 300 I.C.C. 453; these limited movements were not enough to show the defendants "hold themselves out" with Western Pacific for carriage via the Bieber route, Division 2 concluded there are no "through routes" in effect between the defendants and Western Pacific; hence, Western Pacific is not a "connecting line" of the defendants.

On this reasoning a carrier which has physical facilities to handle traffic with a distant line which reaches it by an intermediary line but chooses to favor the distant line's competitor may take the disadvantaged line entirely out of the protection of section 3 (4) by consistent and effective adherence to a refusal to deal.

Atlantic Coast Line v. *United States* could have led Division 2 to the reverse conclusion, even on its "through route" requirement, had it chosen to stress the sentences immediately preceding the portion it quoted. These sentences would have allowed it to bring Western Pacific within the "through route" definition of the *Thompson* case. The

analogy they suggest, more readily than a "through route" composed of Western Pacific and defendants, is a "through route" composed of Western Pacific and its Bieber route partners—particularly Great Northern, the intermediate carrier between Western Pacific and defendants. In these sentences the Court said (at p. 293):

> The plaintiffs contend that the restrictive schedules [fol. 749] are consistent with the conditions because the Georgia & Florida is not a carrier "connecting with the Clinchfield." The argument is that the Georgia & Florida does not connect, since its own rails do not physically abut on the Clinchfield's rails—*the connection being made over the Piedmont & Northern, an intermediate carrier.* [Emphasis added]

Division 2 did not choose this alternative, however. Instead it then imported into section 3 (4) a concept of "through route" which has nothing to do with discrimination between connecting lines under that section, although valid in the unrelated context from which Division 2 took it. *Denver & R. G. W. R. Co.* v. *Union Pacific R. Co.*, 351 U.S. 321, 330. That context is the limitation in section 15 (4) upon the Commission's power to establish through routes and joint rates under section 15 (3). Section 15 (4) prohibits the Commission from establishing any "through route" under section 15 (3), with exceptions not material here, if any carrier which would participate in the through route would thereby be required to "short haul" itself, i.e., "to embrace in such route substantially less than the entire length of its railroad."

In the *Thompson* case and others Division 2 relied on, carriers challenged joint rates the Commission had ordered established, claiming that in establishing these joint rates the Commission really had established through routes where none had existed before which required them to short haul themselves. Involved in these cases is the right of the carrier to retain its own long haul. The carrier can protect this right by declining to enter into joint relationships

with a connecting line which whatever their form would [fol. 750] amount to an offer by both of a through transportation service over the lines of each. These cases thus turned on whether such a "through route" had already been established between the resisting carriers and those with whom the Commission had ordered them to enter into joint rates, *by their own actions;* if so, the short haul restriction on the Commission's power to establish the through route by *its own act* did not come into play.

The carrier can waive its right to the long haul if it so chooses, for the short haul restriction is only a limitation on the exercise of one particular power by the Commission. In countless instances carriers have done so, including this case.[2] Protection of the railroads against being short hauled involuntarily in a Commission-made through route rests on a settled policy of Congress that such protection is in the national interest. Despite urging from the Commission to repeal the short haul restrictions because they pro- [fol. 751] duce inefficient and wasteful transportation, Congress has adhered to this policy with but slight relaxation since 1910. See *United States* v. *Mo. Pac. R. Co.*, 278 U.S. 269; *Stickell & Sons* v. *Western M. Ry. Co.*, 153 I.C.C. 759; *Thompson* v. *United States*, 343 U.S. 549, 554-56. But the policy represents only a restriction on one governmental power, not an endorsement of private acts. Evidence that

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[2] Union Pacific shorthauls itself between Los Angeles and Portland by joining in through rates and routes with Southern Pacific via Portland. Union Pacific and Northern Pacific short haul themselves between Portland and Bend, Oregon, about 246 miles, by joining in through rates and routes with Southern Pacific via Portland. Union Pacific's line to Bend parallels that of the Spokane, Portland & Seattle Railway Co., and subsidiaries used by Northern Pacific. Interchange at Bend would in each case result in a through route with the Bieber route lines. This is the same short haul that Division 2 says defendants would suffer under joint rates with Western Pacific. Northern Pacific also short hauls itself (through a subsidiary) by joining in through rates and routes via Portland rather than Eugene, Oregon. Compare *Atlantic Coast Line R. Co.* v. *Seaboard Air Line R. Co.*, 286 I.C.C. 669, at p. 675.

a carrier has refrained from establishing relationships with another which expressly or impliedly amount to a joint offer by both of a through service over their respective lines goes only to the question whether a Commission-ordered through route is really being required against the will of the resisting carrier because the short haul restriction on the Commission's power to open a route does not apply if that carrier has in fact or in law already opened the route itself. The resolution of this issue of prior acquiescence on the part of the resisting carrier is all the definition of "through route" in the cases cited by Division 2 stands for.

These cases do not decide whether the resisting carrier discriminated against connecting lines by shunning them; nor that rail carriers who in the self-interest of one or both or all of them have not formed a through route with one another are not connecting lines simply because they have refrained from forming a through route; nor that they cannot be connecting lines unless they do form a through route. Logically, no such decision is possible. Rail carriers have to connect with one another to be able to arrange themselves into a through route. Whether they form them-
[fol. 752] selves into a through route—whether they "hold themselves out as offering through transportation service" —they still connect. This seems self-evident. So far as can be discovered, it has always been assumed. Thus, in 1907 the Commission, in *Through Routes and Through Rates*, 12 I.C.C. 163, said (at p. 166):

> A through route is a *continuous line of railway* formed by an arrangement, express or implied, between *connecting carriers*. It must have a rate for every service it offers, and, as the route is a new unit—one line formed of two or more *connecting lines*—so its rate for every service is a unit, even though it be divided between the several carriers arranging themselves into the through route. [Emphasis added]

Even in the main case on which Division 2 relied, *Thompson* v. *United States, supra*, the Court said (343 U.S. at pages 556-557):

The statutory term "through route," used throughout the Interstate Commerce Act, has been defined by this Court as follows:

> A "through route" is an arrangement, express or implied, between *connecting railroads* for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another. [Emphasis added][1]

The prohibition against a carrier discriminating between its connecting lines rests on an entirely distinct policy which Congress has adhered to without deviation since 1887 and has even tightened. That policy commands carriers to ac- [fol. 753] cord equal treatment in rates to all connecting lines similarly situated. The same aloofness which may save a carrier from submitting to an involuntary short haul in a Commission-ordered through route may be discrimination in rates if the carrier extends to one connecting line a system of rates which it withholds from another line to which the carrier could accord the same or substantially similar treatment. If the defendants accorded Western Pacific *joint* rates, thus forming a "through route" between themselves and Western Pacific, but at a level higher than the rates they accord the Southern Pacific, than even under Division 2's decision Western Pacific would have standing as a "connecting line" under section 3 (4) to complaint of the discrimination in rates. The effect of Division 2's decision is to take the case out of section 3 (4) entirely if the defendants' differing treatment of Southern Pacific and Western Pacific takes the harsher form of refusal to join with Western Pacific in any rates at all.

No purpose so radically to narrow the scope of section 3 (4) can be gathered from the unqualified term "discriminate in their rates." To the contrary, section 3 outlaws discrimination "in all its forms." *Dixie Carriers* v. *United*

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[1] See also *St. Louis Southwestern Railroad Company* v. *United States*, 245 U.S. 136 at p. 139, n. 2.

States, 351 U. S. 56, 60. The result Division 2 has reached by piecing together quotations from judicial decisions, each sound in its own context but unrelated to one another, achieves an artificial distortion of section 3 (4) which would condone and encourage the very kind of monopolistic combination which this Commission long ago said that section [fol. 754] 3 (4) aimed at outlawing. In *N.Y. & N.R. Co.* v. *N.Y. & N.E. R.*, 3 Inters. Com. Rep. 542, decided in 1891, the Commission said (at pp. 547-48, 550):

> The exact question presented in this case seems to be whether a common carrier subject to the provisions of the Act to Regulate Commerce which affords facilities for the interchange of traffic to a connecting common carrier extending beyond its own line, upon an adjustment of through rates than the sum of the local rates on the two lines, can refuse to afford like facilities for interchange of traffic and a like adjustment of rates to another connecting common carrier reaching the same ultimate destination and a competitor in business with the first connecting carrier, all the carriers being engaged in the transportation of interstate commerce and subject to the Act—in other words, whether in such a case a discrimination in affording facilities for the interchange of traffic and in rates and charge between the respective connecting carriers can lawfully be made. This inquiry involves an interpretation of the second clause of the third section of the Act to Regulate Commerce.[4]
>
> • • • • • • •

[4] The provision which is now section 3 (4) of the Act then read as follows:

> Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines.

> When, therefore, the Statute declares that there shall be no discrimination in rates and charges between connecting lines, it can only mean that no difference or distinction shall be made in rates that shall coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business that under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor. Unless this effect is given to the language of the statute it is only a meaningless enactment.

[fol. 755] Division 3 and the full Commission have rejected the argument that the term "connecting line" in section 3 (4) is limited to lines which either physically connect with one another or jointly participate in through routes. To require through routes, Division 3 rightly said in *Sioux City & N. O. Barge Lines* v. *C. & N. Ry. Co.*, 303 I.C.C. 537, would leave section 3(4) extremely limited in scope. The full Commission, in *American Barge Line* v. *A.G.S. R. Co.*, 306 I.C.C. 167, reluctantly but explicitly held that barge lines must be treated as "connecting lines" of the defendant rail carriers even where there were no physical transportation facilities to form the connection, and was sustained, almost summarily, by a three-judge court in *A., T. & S. Fe Ry.* v. *United States*, 194 F. Supp. 438. Earlier in the same proceeding, in *American Barge Line* v. *A. G. S. R. Co.*, 303 I.C.C. 463, the full Commission had also found that the barge lines had no arrangement with the rail carriers for continuous carriage of the commodity involved. One may fairly take the full Commission's *American Barge Line* decisions as embodying its rejection of either physical connection or joinder in through routes as essential to "connecting line" status.

There apparently having been no Commission or court decision which passes upon the "through route" requirement, applied, as here, to a claim that one rail carrier is discriminating in rates against another, there may remain a question whether rail-versus-rail is distinguishable from

these decisions. Division 2 may have thought so because these decisions and the authorities on which they rely [fol. 756] stress the Congressional direction to the Commission in the Transportation Act of 1940 to administer the Act so as to preserve the inherent advantage of lower cost of water transportation and because the 1940 Act singled out water transportation for separate mention in the final sentence of section 3 (4): "As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III."

Neither consideration, however, can support such a distinction. In the authorities cited in the decisions just mentioned, which begin with *I.C.C.* v. *Mechling,* 330 U.S. 567; and include *James McWilliams Blue Line* v. *United States,* 100 F. Supp. 66 (affirmed on motion, 342 U.S. 951); *Dixie Carriers* v. *United States,* 351 U.S. 56; and *Arrow Transportation Co.* v. *United States,* 176 F. Supp. 411 (affirmed 361 U.S. 353); there is indeed frequent intermingling of the national transportation policy with section 3 (4). But there are also distinct and independent findings of violation of section 3 (4). *Mechling,* at p. 577. *Dixie Carriers,* which includes a clear finding of violation of section 3 (4), explains the intermingling: the rate discrimination against the connecting water carrier not only violates section 3 (4) and is condemned on that account, but, by diverting business away from them, it also violates the national transportation policy by denying water carriers and shippers the inherent advantage of cheaper water transportation. In *Arrow Transportation* the separate finding under section 3 (4) was the main issue, critical to the relief sought; [fol. 757] the court called other phases of the case a "skirmish."

The mention of water carriers separately from rail carriers in section 3 (4) does not justify or require a more restricted application of that section to rail carriers. The parallel mention of rail carriers in the same sentence (and in the corresponding sentence of the counterpart section

305(d) of part III) leaves no basis for supposing that any differing treatment was intended for water carriers. The two are mentioned separately in section 3 (4) only because they are also mentioned separately, but in reverse order, in the same last sentence of section 305 (d). There are these two sections because Congress adopted the House version of the Transportation Act of 1940 and its method of bringing water carriers under regulation. The Senate bill was drafted as a codification of the entire Interstate Commerce Act. See S. 2009, 76th Cong., 1st Sess., print of May 29, 1939, sec. 54(1) at p. 191; H. Rept. 1217, 76th Cong., 1st Sess., pp. 9-10. Provisions common to more than one of the three modes of transportation to be covered frequently appeared in a single section; thus, section 10 (12), corresponding to the present sections 3 (4) and 305 (d), was directed at "All common carriers by railroad and by water." See S. 2009, May 29, 1939 print, at p. 45. The House Committee substituted for this format the present arrangement of the Act, preserving the already existing parts I and II and adding part III. H. Rept. 1217, pp. 9-10. Section 6 (d) was the redrafted section 3 (4); section 305 (d) became the present section 305 (d). See S. 2009, Union Cal. 479, [fol. 758] print of July 18, 1939, pp. 204-05, 253. The committee reports indicate the separate mention of water carriers in section 3 (4) and that of rail carriers in section 305 (d), were but natural cross-references resulting from the extension to water carriers of the duty not to discriminate against connections, in the form in which the House had put the extension, and were intended only to confirm that each mode of carriage should thenceforth enjoy the same protection against the same practice of rate discrimination by the other. See S. Rept. 433, 76th Cong., 1st Sess., p. 14; H. Rept. 1217, pp. 11, 22.

There seems no alternative to the conclusion that Western Pacific is a "connecting line" of defendants, entitled to the protections of section 3 (4), and the full Commission is respectfully urged so to find.

[fol. 759]

II

The Commission should find Division 2 adopted an inadmissible standard by which to measure similarity of circumstances and conditions and should test similarity in terms of the added cost or operating burden upon defendants, if any

While professing to decide that section 3 (4) did not require defendants to accord Western Pacific equal treatment with Southern Pacific because the circumstances and conditions were not substantially similar, Division 2, without acknowledging it did so, adopted arguments the defendants built around a statement by the Commission in the so-called *Ogden Gateway* case that, "A finding of discrimination under section 3 (4) of the Act must be supported by a showing that the transportation conditions are no less favorable over the routes alleged to be discriminated against than over routes said to be preferred." *D. & R. G. W. R. Co.* v. *U. P. R. Co.*, 287 I.C.C. 611, at p. 658. This statement, there addressed without supporting authority to differences in rates through *different* gateways rather than a single gateway such as Portland, may be unsound even in the former context because it would suppress incentive to improve upon or surmount physical and operating handicaps. It cannot be traced back earlier; it was not adopted by the Supreme Court when it affirmed the Commission's order, 351 U.S. 321; and even in the Commission's decision was not the basis on which the Commission also voided discriminatory rates through a single gateway, 287 I.C.C. at pp. 658-59, nor on which the Supreme Court affirmed this action, 351 U.S. at p. 335, n. 7.

[fol. 760] In the present case Division 2 cited longer distances and more difficult operating conditions over the Bieber route lines from California *to Portland* than over the Southern Pacific line from California to Portland. The defendants of course do not perform this leg of the transit. In an extension of the same reasoning, it found that joint rates between the Bieber route lines and the defendants to

apply via Portland could not be put into effect without requiring routings to Portland and beyond which would be more circuitous than routings under the defendants' joint rates with the Southern Pacific, and, unlike the latter, would in some instances necessitate backhauling in a direction opposite to the direct movement. For example, it found that a movement between points in California and points on the Union Pacific east of the Cascades would require a haul by the Great Northern over the SP&S line west from Wishram *to Portland,* opposite to the direct movement, *before the Union Pacific could begin the haul* on its own line east from Portland to destination paralleling the SP&S line. It found the Northern Pacific would have to route such a movement via its Auburn line, which is 368 miles longer to Spokane and a more difficult transit than the SP&S direct route via Wishram. It found that movements to Union Pacific and Northern Pacific points would require a bridge crossing *by Great Northern* from Vancouver south to Portland which each defendant would duplicate on beginning the haul to destination. And it found that the switch at Portland *before Union Pacific began its haul* would cost the Union Pacific $3.69 per care as against a [fol. 761] cost of $46.88 per car for switching in interchange with the Southern Pacific.

Western Pacific disputes many of these findings, such as the supposed necessity of routing via Auburn (which it says would be a further and needless discrimination) and the claimed disparity in switching costs (which it says represent the fully distributed cost of operating the terminal company in the one instance as against only the direct cost of the switch train crew in the other). More important than these disputes, which we think the full Commission certainly should resolve, is the premise, drawn from the quotation from the *Ogden Gateway* case, that the validity of the discrimination which the defendants practice against Western Pacific may be permitted to depend upon adverse transportation conditions the traffic may encounter *before it reaches the line of either defendant* rather than upon

more costly or more difficult transportation conditions the defendants themselves would encounter after their responsibilities as common carriers had begun. Granted that section 3 (4) require equality between connecting lines only under substantially similar circumstances and conditions, the Commission and courts have held that a discrimination in rates, competitively motivated, may not be founded upon conditions surrounding the prior transportation which have no adverse effect upon the discriminating carriers. Assuming the correctness of Western Pacific's view of the disputed findings, there is no instance in which the defendants would be required to perform a substantially different or [fol. 762] more costly or any longer transportation service *on their lines* in connection with the Bieber route at Portland than in connection with the Southern Pacific; the routings and defendants' transportation would be the same in either case. Assuming correctness of Division 2's view, it should be for the public not the defendants to evaluate any physical inferiorities of the Bieber route, and to be free to do so under freedom of selection which the defendants have always withheld through their discriminatory rate structure.

In *I.C.C.* v. *Mechling, supra,* the discrimination rested upon the fact that the traffic against which the discriminatory rates were directed originated with competitive barge lines; the Court held that section 3 (4), as well as other provisions of the Act, flatly forbade the rail carriers from charging more for carrying grain delivered to them by barge than for carrying grain delivered by rail or lake carrier unless it *cost the rail carriers* more to haul the ex-barge grain than to haul the ex-rail or ex-lake grain. 330 U.S. at p. 577.

Here the discrimination, although rationalized in terms of supposedly more favorable physical conditions on the line of the Southern Pacific, admittedly rests on the fact that the traffic originates with Southern Pacific's competitor, Western Pacific.

As in *Mechling* this is not the dissimilarity in conditions and circumstances which can justify discrimination in rates between connecting lines. Long ago, again in *N.Y. & N.R. Co.* v. *N.Y. & N.E. R., supra,* the Commission said the same [fol. 763] thing (3 Inters. Com. Rep. at p. 550):

> This principal of equality in facilities and rates applies obviously where the conditions for interchanging with the respective connecting carriers are substantially equal. If these conditions are materially different, the dissimilarities created by the facts themselves may justly vary the application of the principle to correspond with the actual condition. Discrimination occurs when a difference is made between connecting lines similarly situated. A difference founded on actual dissimilarities in the service, or in the convenience of interchange, and adapted to the difference in circumstances, is not discrimination. But a dissimilarity of this nature *arises from physical conditions and not from business motives,* and the discrimination made must be no greater than the different conditions will justify. [Emphasis added]

In *Chattanooga Packet Co.* v. *I.C.R. Co.,* 33 I.C.C. 384, the Commission stated (at pp. 391, 392):

> Plainly by these provisions the only difference which carriers can make in the treatment of their connections is such as can be justified by differences in the conditions and circumstances surrounding the service rendered. By the provisions of section 3 carriers are prohibited from charging more for traffic between the same points routed over one connecting carrier than for that routed over another, unless the service which they perform is different in the one case than in the other.
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> * * * * * * *
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> The fact that the proportional rates to and from the Ohio River [complained of] are compelled by competi-

tion can have no bearing upon our determination of the issue of unjust discrimination. The "like circumstance and conditions" referred to in section 2 of the Act are those which arise within the field of haulage, and do not include competition.

Western Pacific is not asking for the prescription of through routes or joint rates, but for an order directing [fol. 764] defendants to end a discrimination which prevents full utilization of the Bieber route and deprives the public of freedom of selection. Nor is it asking for fourth section relief. Were these the case, the physical deficiencies Division 2 finds a bar to relief might be relevant. But even then Division 2's decision would be difficult to reconcile with *Pacific Coast Fourth Section Applications,* 190 I.C.C. 273. There Division 2 as then constituted found it to be in the public interest to allow Western Pacific to maintain the same level of fourth section rates as it had previously allowed Southern Pacific to maintain, for the purpose of meeting water competition. It did so despite an extensive detailing of the same longer distances and higher percentages of circuity over the Bieber route *between California and Portland* which the present Division 2 finds fatal to Western Pacific's relief under section 3 (4). It has already been seen that the operating routes *of the defendants* would be no longer in connection with the Bieber route through Portland than in connection with the line of the Southern Pacific through Portland. It is safe to venture that under these circumstances the Commission is not to administer the Act so as to foster competition between rail carriers and a water carrier, but supress competition between the same rail carriers.

III

The Commission should find that Division 2 erred by finding the short-haul restriction precluded the relief sought

Division 2 treated the case as if Western Pacific was still asking the Commission to prescribe through routes and

[fol. 765] joint rates with the defendants and held that as the routes sought would require the defendants to interchange traffic with the Great Northern at Portland, both defendants would be short-hauled from Bend (between Bieber and Wishram) to Portland, a distance of 246 miles, in violation of section 15 (4). Western Pacific having abandoned its prayers for the prescription of through routes and joint rates under section 15 (3) after the hearing (as well as its complaint under section 1 (4)), the issue before Division 2 was only whether the defendants are discriminating against Western Pacific in violation of section 3 (4). Had Division 2 found discrimination it would have ordered the defendants to end it. In that event the initiative as to the various means open to abate the discrimination would have lain with the defendants. The injection of the short-haul restriction from section 15 (4) into a case which did not require Division 2 to prescribe a through route under section 15 (3) denied relief Division 2 could have granted under section 3 (4) on a consideration having no relevance to the granting of that relief. That this was erroneous is demonstrated by *A., T. & S. Fe Ry.* v. *United States, supra* (194 F. Supp. at p. 444):

> If relief is necessary to cure a discrimination against water transportation in violation of some provision of the Interstate Commerce Act, 49 U.S.C.A. § 1 *et seq.*, there is no requirement, as a condition of relief, that the barge lines be parties to "through routes" or *that the Commission make a finding under either Sections 15(3) or 307(d) of the Act. Nor does Section 4 of the Act impose a condition on the power of the Commission to act.* The Commission is empowered by the Act to grant relief in such form as is required to remedy the violation of Section 3(4). [Emphasis added]

[fol. 766] Wherefore, the United States of America requests the full Commission to reconsider the Report and Order of Division 2 and to grant Western Pacific Railroad

Company the relief under section 3(4) of the Interstate Commerce Act for which it prays.

John H. Dougherty, Attorney, Department of Justice;

Robert L. Wright, Acting Assistant Attorney General, Department of Justice;

Joseph J. Saunders, Attorney, Department of Justice.

Date: July 26, 1963.

[fol. 768]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

REPLY OF INTERVENER SOUTHERN PACIFIC COMPANY TO PETITION OF DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE FOR THE PURPOSE OF PETITIONING THE FULL COMMISSION FOR RECONSIDERATION OF THE REPORT AND ORDER OF DIVISION 2 AND TO BE HEARD ON ORAL ARGUMENT—Dated and Served August 1, 1963

Comes now intervener Southern Pacific Company and replies to the petition of the United States Department of Justice for intervention in this proceeding.

Preliminary Statement

This proceeding was commenced on February 10, 1961, with the filing of a complaint by Western Pacific Railroad Company and its wholly-owned subsidiaries, charging that the Union Pacific Railroad Company and Northern Pacific Railway Company had violated sections 1(4) and 3(4) of the Interstate Commerce Act. Hearings were held in San

Francisco, Calif., from May 8 to 10, 1961. Briefs were thereafter filed, and on August 10, 1961, the examiner's recommended report and order was served. Thereafter [fol. 769] exceptions to said proposed report were taken and replies were filed. Division 2 of the Commission, in a report and order served August 2, 1962, found no violation of the Interstate Commerce Act and ordered the complaint dismissed. Complainants thereafter filed a petition for reconsideration of the report and order of Division 2, and, after replies were filed by defendants and intervener Southern Pacific Company, said petition for reconsideration was denied on January 18, 1963. Thereafter complainants filed a petition January 30, 1963, seeking a finding that an issue of general transportation importance was involved in this proceeding. By order dated February 14, and served February 20, 1963, the Interstate Commerce Commission granted said petition and designated this proceeding as one involving an issue of general transportation importance. This Commission further ordered that petitions for reconsideration might be filed within thirty days after the date of service of said order. On March 21, 1963, complainants filed a petition for reconsideration by the full Commission and request for oral argument. Replies to said petition were filed on April 29, 1963, by defendants and intervener Southern Pacific Company. By order dated July 12, 1963, and served July 30, 1963, the entire Commission denied said petition for reconsideration and request for oral argument.

The Petition for Leave to Intervene Is in Violation of the Commission's General Rules of Practice and Should Be Denied

Petitioner states at page 2 of its petition for leave to [fol. 770] intervene:

> "1. That petitioner had no knowledge of this proceeding, a private proceeding upon complaint between

private persons, until the same was brought to its attention following the Commission's determination and announcement that it involves an issue of general transportation importance."

As previously pointed out, the order of this Commission declaring this proceeding to be of general transportation importance was made public on February 20, 1963. Petitioner does not disclose the exact date after the issuance of that order that this proceeding came to its attention. It is, however, the fact that petitioner has had knowledge of this proceeding since at least May 10, 1963. Petitioner gives no explanation as to why its petition for leave to intervene was not filed in the approximately two and one-half month period prior to the July 30, 1963, service date of the order of the full Commission denying complainants' petition for reconsideration and request for oral argument.

Rule 1.72(b) of the General Rules of Practice of the Interstate Commerce Commission, which rule governs petitions for interventions, states:

"(b) *When filed.* A petition for leave to intervene in any proceeding should be filed prior to or at the time the proceeding is called for hearing, but not after except for good cause shown."

It is clear that not only has petitioner not filed its petition for leave to intervene within the time required by the Rules of Practice, but actually filed its petition for leave to intervene only two business days prior to the making public of the order of the full Commission denying [fol. 771] complainants' petition for reconsideration and request for oral argument. (The order was actually made on July 12, 1963.)

No reason was given in said petition as to why petitioner did not file earlier inasmuch as it had knowledge of said proceeding for two and one-half months.

It is submitted that under these facts petitioner has utterly failed to comply with the rules of this Commission

and has failed to show any good cause as to why its petition should now be granted.

The True Reason for the Filing of a Petition for Leave to Intervene at This Stage of the Proceeding

Petitions for reconsideration are required under the General Rules of Practice of this Commission to be filed within thirty days after the date of service of a decision or order. Rule 1.101(e) states:

> "(e) *Time for filing.* Except for good cause shown, and upon leave granted, petitions under this section must be filed within 30 days after the date of service of a decision or order."

As pointed out in the preliminary statement, *supra*, the report and order of Division 2 was served on August 2, 1962, or approximately one year ago.

On its face the petition filed herein states that the reason for intervention is for the sole purpose of petitioning the full Commission for reconsideration of the report and order of Division 2, and of being heard on oral argument if the same should be granted. As pointed out in the preliminary statement, *supra*, the complainants in this proceeding have already filed such a petition before the full Commission, and the full Commission has now denied said [fol. 772] petition.

Petitioner herein is asking for relief that at this stage of the proceeding is denied to complainants. If petitioner were allowed to intervene in this proceeding and file a petition for reconsideration, it would be granting to it procedural rights which are unavailable to complainants and furthermore, if allowed, would mean that in any Commission proceeding where a complainant has exhausted its remedies before the Commission it would be in a position to persuade other persons to file a petition for leave to intervene followed by a petition for reconsideration, based upon the same grounds that complainants have already set

forth, argued, and lost. Such a procedure could continue ad infinitum.

The language of the Commission in *Cattle Raisers Assn. v. Chicago, B.&Q. R.R.*, 12 I.C.C. 6 (1906), is appropriate to this proceeding. In that case the Commission said:

> ". . . We feel that when an order has been made the case before this Commission should be treated as closed, and that it ought not to be opened except upon a showing that some wrong or injustice has been or will be effected."

Conclusion

It is submitted that petitioner has failed to show good cause for the waiver of Rule 1.72(b) and the petition for leave to intervene should therefore be denied.

Respectfully submitted,

Thormund A. Miller, Charles W. Burkett, W. Harney Wilson, Attorneys for Intervener, Southern Pacific Company.

San Francisco, Calif., August 1, 1963.

[fol. 773] Certificate of Service (omitted in printing).

[fol. 774]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

PETITION OF UNITED STATES TO FULL COMMISSION (1) TO VACATE ITS ORDER SERVED JULY 30, 1963; (2) TO REOPEN THE PROCEEDING FOR THE PURPOSE OF CONSIDERING PETITIONS OF THE UNITED STATES FILED JULY 26, 1963 AND SUCH RESPONSES THERETO AS MAY BE FILED BY THE PAR-

TIES; (3) TO HEAR ORAL ARGUMENT IF THEN WARRANTED; AND (4) TO ISSUE A DECISION STATING FINDINGS AND CONCLUSIONS AND THE REASONS OR BASIS THEREFOR UPON ALL MATERIAL ISSUES AS WELL AS AN ORDER GRANTING OR DENYING THE RELIEF SOUGHT—August 7, 1963

The Commission's order served July 30, 1963 shows on its face that on July 26, 1963, when this Petitioner filed with the Commission a petition for leave to intervene in this proceeding and with said petition an additional petition for reconsideration by the full Commission of the Report and Order of Division 2, which this Petitioner asked leave to file as an intervenor, the full Commission had already decided, at a general session on July 12, 1963, to deny complainant's earlier filed petition for reconsideration. The Commission's order, although served July 30, 1963, also [fol. 775] shows that the Commission reached this decision without consideration of this Petitioner's petitions filed July 26, 1963. Finally, the Commission's order shows that the only reason the Commission assigned for this decision is: " . . . the reason that sufficient grounds have not been presented to warrant granting the action sought."

The Commission's order was not served on this Petitioner. This Petitioner now respectfully petitions the Commission: (1) to vacate its order; (2) to reopen the proceeding for the purpose of considering this Petitioner's petitions of July 26, 1963 and such responses thereto as may be filed by the parties; (3) to hear oral argument if the Commission should then consider the same warranted; and (4) upon final disposition of the proceeding to issue a decision expressly stating its findings and conclusions, and the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, together with an order granting or denying the relief sought.

In support of the foregoing petition, the Petitioner respectfully states the following:

1. This Petitioner had no knowledge of this proceeding until the same was brought to its attention some months after the Commission designated it as one involving an

issue of general transportation importance. Petitioner in turn decided to seek intervention only after careful study of the Report and Order of Division 2, of the issues of fact and law therein raised, of the disposition Division 2 made [fol. 776] of those issues, and of the positions of the parties.

2. Petitioner's interest in this proceeding, that stated in paragraph 3 of its petition for leave to intervene, is independent of the interest of any of the parties. Petitioner believed that the views offered in the petition for reconsideration tendered with its application for leave to intervene could assist the Commission in reaching a decision more informed than one responsive only to positions advanced by the immediate parties. Petitioner's interest is that the Interstate Commerce Act be administered and enforced so as to foster, insure and preserve that competition within modes of transportation as well as between them which is necessary to achieve the goals of the national transportation policy expressed in the preamble to the Act and to achieve the ultimate objective of the Act—a national transportation system adequate to vital commercial, postal, and defense needs of the nation. Prominent among these goals is the establishment and maintenance of reasonable charges for transportation services, free of unjust discriminations or preferences or destructive competitive practices.

3. Division 2's Report disclosed that defendants, ever since the Bieber route was opened thirty-two years ago, have refused to join with Western Pacific and its Bieber route partners in any system of rates to apply via the Portland gateway between points on their lines and points [fol. 777] served by the Bieber route although they have maintained joint rates via Portland for over fifty years with intervenor Southern Pacific, so that shipments between points on defendants' lines and Bieber route points move only in small volume under combination rates higher (with minor and possibly temporary exceptions) than defendants' joint rates with Southern Pacific.

The Report acknowledged that Western Pacific is fully able to meet any demand for service which might result

from defendants offering Western Pacific rates competitive with their rates with Southern Pacific; acknowledged Western Pacific's inability in most cases to locate industries along its lines except where access is also available through the Southern Pacific to points served by defendants; and acknowledged an annual loss to Western Pacific, because of the lack of competitive rates, of more than 25,000 carloads from industries served by defendants.

The Report acknowledges the vastness and the economic growth and importance of the area throughout which the repressive influence of this practice extends. It does not dispute testimony that elimination of this discriminatory rate pattern would materially assist in the greater industrial development of the Pacific Northwest, would provide for a greater and more complete competitive rail system, and generally assist in the economic growth of the whole area. The Report's only response (and this on the erroneous premise that Western Pacific still sought prescription of through routes) to shipper urgings that elimination of the [fol. 778] discrimination would provide them more freedom of choice of carrier, would improve transportation service, car supply and time in transit, and would make additional transit privileges available, is that there is nothing to show that that service provided by Southern Pacific jointly with defendants is inadequate.

4. But after painstakingly describing defendants' discrimination against Western Pacific and candidly acknowledging its monopolistic effect, Division 2, in the major point it then decided, held that Western Pacific, since it does not reach defendants at Portland directly but does so via the intermediate line of Great Northern, could have standing to complain of this discrimination under section 3(4) as a "connecting line" of defendants only if there were a "through route," which it defined from the irrelevant context of the short-haul restriction in section 15(4), in existence between defendants and Western Pacific—that is, only if defendants had held themselves out jointly with Western Pacific as offering a joint transportation service, precisely what defendants had always refused to do.

5. Petitioner sought intervention not merely because of the unique importance of this proceeding but also because Petitioner believes Division 2's adoption of joinder in "through routes" as essential to status as a "connecting line" under section 3(4) is a self-defeating interpretation of section 3(4) which accomplishes its substantial repeal. If defendants' discrimination had taken the different form of [fol. 779] higher joint rates with Western Pacific than with Southern Pacific, then, under this interpretation, the fact that Western Pacific reaches defendants over an intermediary line would not bar its remedy under section 3(4). But this interpretation permits a carrier by railroad with physical facilities to handle traffic jointly with a distant line which reaches it by an intermediary line to boycott the distant line and discriminate in favor of its competitor with impunity, so long as its refusal to deal with the distant line is unbroken and achieves its purpose. Here this interpretation condones defendants' freely admitted discrimination in rates designed to coerce the public to employ Southern Pacific to the exclusion of its competitor, Western Pacific. It condones a discrimination which deprives Western Pacific of business which the public would give Western Pacific, under freedom of selection. It perpetuates a monopoly in favor of Southern Pacific.

6. This issue and others of large importance with impact upon large segments of the public and a vast area of the country, are presented in this proceeding. Their importance requires that the Commission say how it has resolved them. Moreover, it is for the Commission in the first instance to interpret the Interstate Commerce Act and to say whether its prohibitions have been violated. But to exercise this function the Commission must speak. It cannot act by remaining silent. The brief recitation in its order served July 30, 1963 that "sufficient grounds have not been presented to warrant granting the action sought" affords no [fol. 780] clue what the Commission has decided, or whether the Commission's decision has turned upon issues of fact, or of law, or of matters considered within its discretion. It

cannot even be said what result the Commission has reached, whether it has denied the relief Western Pacific originally sought under sections 1(4) and 15(3) but abandoned after hearing, or only the relief it has always sought under section 3(4).

In fact there appears to be no identifiable decision. Under section 17 of the Act and the Commission's regulations, 49 CFR 1.101, the Report and Order of Division 2 has no administrative finality since this proceeding falls within the provisions of Rule 1.101(a)(2) of the Commission's General Rules of Practice, which excepts from administrative finality orders of a division in any proceeding which the Commission designates as one involving an issue of general transportation importance. The Commission's order served July 30, 1963, however, does not adopt the finding and conclusions of Division 2 as its own. And the order articulates no others. It is predictable that the order served July 30, 1963, or, if it is vacated, such other order as the Commission may enter in this proceeding, will undergo judicial review at the instance of the aggrieved party or parties. The Administrative Procedure Act requires that all decisions include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, [fol. 781] and the appropriate rule, order, sanction, relief, or denial thereof, sec. 8(b), 5 U.S.C. §1007(b), so that the parties and the reviewing court may know precisely what the agency has decided. An ultimate finding, such as that here, that a party has failed to sustain his burden of proof is not enough. *Missouri Pac. R. Co.* v. *United States*, 203 F. Supp. 629. *Cf. Gilbertville Trucking Co.* v. *United States*, 196 F. Supp. 351.

Respectfully submitted,

John H. Dougherty, Attorney, Department of Justice.

Certificate of Service (omitted in printing).

[fol. 783]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I.C.C. Docket No. 33679

[Title omitted]

REPLY OF DEFENDANTS NORTHERN PACIFIC RAILWAY COMPANY, CAMAS PRAIRIE RAILROAD COMPANY AND WALLA WALLA VALLEY RAILWAY COMPANY TO PETITION OF THE UNITED STATES FOR LEAVE TO INTERVENE—Served August 8, 1963

Come now the defendants Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company and reply to the petition of the United States for leave to intervene in this proceeding for the purpose of petitioning the full Commission for reconsideration of the report and order of Division 2 and to be heard on oral argument and state as follows.

[fol. 784]

I.

Petition Not Timely as Required by Rule 1.72(b)

The complaint in the instant proceeding was filed almost two and one-half years ago, on February 10, 1961. Hearing was held on said complaint on May 8-10, 1961, in San Francisco, California. Briefs were filed by all parties and the examiner's proposed report was served on August 10, 1961. After exceptions and replies thereto and oral argument, Division 2 served its report and order on August 2, 1962. Complainants filed their first petition for reconsideration on August 29, 1962, and after replies thereto, it was denied by Division 2 acting as an appellate division on January 18, 1963. Three days later, complainants filed a petition for waiver of the Commission's rules to permit the filing of a petition submitted therewith for a further hearing. Replies were filed thereto. Then on January 30, 1963, complainants filed a petition seeking a finding that

an issue of general transportation importance was involved. On February 14, 1963, the Commission issued its order finding that an issue of general transportation importance was involved. Complainants then filed their second petition for reconsideration on March 21, 1963, and replies thereto were filed by the parties on April 29 and May 13, 1963. By order dated July 12 and served July 30, 1963, the Commission denied complainants' petition of January 21, 1963, for a further hearing, petition of March 21, 1963, for re- [fol. 785] consideration, and request for oral argument on the grounds that sufficient reasons had "not been presented to warrant granting the action sought."

Petitioner has offered no reason for its unprecedented delay other than its lack of knowledge of this proceeding until the Commission's order declaring the same to be a matter of general transportation importance was announced five and one-half months ago. (Pet. Par. 1). Petitioner fails to indicate when and how this proceeding finally came to its attention; why it did not come to its attention earlier, and why it delayed apparently five and one-half months after the matter was called to its attention before filing its petition in intervention.

The Commission's General Rules of Practice, §1.72(b), provide:

> "(b) *When filed.* A petition for leave to intervene in any proceeding should be filed prior to or at the time the proceeding is called for hearing, but not after *except for good cause shown.*" (Emphasis supplied)

Petitioner has assigned no cause for a delay of more than two years other than "no knowledge" of the proceeding and no reason whatsoever for a delay of more than five months after the Commission found that an issue of general transportation importance was involved. Manifestly, such an unprecedented delay does not constitute good cause within the meaning of this salutary rule. In order [fol. 786] to constitute *good cause,* exceptional circum-

stances must be shown.[1] Petitioner has simply shown no cause, let alone "exceptional circumstances."

If its petition were granted, the United States would, to all intents and purposes, become a complainant in this proceeding. *Raymond Bag Co.* v. *Atchison, T. & S. F. Ry. Co.*, 196 I.C.C. 487, 488; *Keystone Steel & Wire Co.* v. *Chicago, B. & Q. R. Co.*, 279 I.C.C. 178, 179. A petition in intervention is in the nature of a complaint and entitles the intervenor to the same relief as granted the complainant in the case in which the intervention is filed. *General Motors Corp.* v. *Pennsylvania*, 200 I.C.C. 679. Here, complainants' petition for reconsideration by the full Commission was due March 22, 1963, pursuant to the Commission's order of February 14, 1963, finding that an issue of general transportation importance was involved. Under Rule 1.101, such a petition had to be filed within the 30-day period allowed by this order. Petitioner not only has failed to comply with the order, but, further, has not sought relief from Rule 1.101.

Manifestly, petitioner has not shown good cause for its delay in filing its petition for intervention. Further, even if petitioner were a party to this proceeding, its petition for reconsideration is not timely. Complainants could not at this point file a petition for reconsideration because [fol. 787] such a petition was due on or before March 22, 1963. Petitioner's rights, at best, do not exceed the complainants. Further, petitioner has not sought relief from Rule 1.101.

We submit that not only is the petition for intervention not timely, but, moreover, petitioner, like complainants, is barred at this date from filing a petition for reconsideration. If it were otherwise, the Commission simply could not terminate a proceeding because petitioners in interventions and petitions for reconsideration could be filed ad infinitum. Further, the Commission's order of July 12, served July 30, 1963, concluding this proceeding renders the entire matter moot.

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[1] See *Hines* v. *Royal Indemnity Company* (CA 6th 1958), 253 F. 2d 111, 114, involving relief from a court rule providing for the recall of a mandate for good cause shown.

II.

Petition Fails to Set Forth Grounds of Proposed Intervention and Its Interest in the Proceeding as Required by Rule 1.72(a)

Paragraph 3 of complainants' petition asserts that the United States has an interest in its "sovereign capacity as well as that of shipper." The petition then summarizes the National Transportation Policy as contained in the Act. While, admittedly, petitioner is interested in having the Commission enforce the National Transportation Policy, this statement does not constitute a declaration of the grounds for intervention or its interest therein as required by the Commission's rule.

[fol. 788] Surely this petitioner does not enjoy any greater rights before the Commission than that of any other party litigant. Manifestly, all parties are equal before the law. While petitioner has set forth its identity, it has not set forth its interest as a shipper nor has it set forth the grounds for the proposed intervention, and, therefore, its petition fails to comply with Rule 1.72(a) and should, for this reason, be denied.

III.

Petition Fails to Comply with Requirement of a Formal Complaint per Rule 1.72(a)

The Commission's rules are specific with respect to the contents of a formal complaint and require that the facts which are claimed to constitute a violation be specified with clarity and in the light of the particular elements stated in the Act. (Rules 1.28 and 1.30). Unless a petition in intervention conforms to these requirements, no relief thereunder can be accorded. *Iola Cement Mills Traffic Asso.* v. *A. V. I. Ry. Co.*, 115 I.C.C. 49, 61; *Alabama Rock Asphalt* v. *Abilene & S. Ry. Co.*, 176 I.C.C. 555, 563. This petition should be rejected because of its patent failure

to comply with these essential provisions of the Commission's rules.

[fol. 789]

IV.

Additional Routes Not Prescribed Because Not Required in the Public Interest

Petitioner erroneously asserts that the Commission found that it lacked power to correct the situation complained of. (Pet. Par. 4). Patently, the Commission has the power under Sections 1(4) and 15(3) of the Act to establish reasonable through routes and joint rates whenever it is "necessary or desirable in the public interest." (Sec. 15(3)).

The complainants, realizing that they failed to establish a case under Sections 1(4) and 15(3) of the Act, abandoned their allegation of a violation of these sections in their complaint and relied solely upon Section 3(4) of the Act. This action on the part of the complainants was tantamount to an admission that the public convenience and necessity did not require the establishment of the sought through routes. Because of the clear absence of public need, the Commission did not order the additional through routes established between the points involved. The Commission simply refused to prescribe additional through routes under Section 3(4) of the Act, as sought by the complainants, because the evidence of record demonstrated that no violation of this section or any other section of the Act had occurred. Petitioner's statement that the Commission found that it lacked power is completely erroneous and misleading.

V.

Paragraph 6 of Petition Seeks to Broaden the Issues and Should Be Stricken

Petitioner asserts that since the issuance of the report and order of Division 2, many requests have been filed by

shippers with the rate bureaus involved seeking publication of joint through rates via the Bieber route. (Pet. Par. 6). This allegation is beyond the scope of the record and, further, is an attempt to broaden the issues in violation of Rule 1.72(c). This paragraph of the petition is squarely in conflict with the opening paragraph and Paragraph 8 of the same petition which state that the petition does not in any way broaden the issues in the proceeding.

Petitioner seeks to go beyond the record by referring to events which occurred more than a year subsequent to the hearing in an attempt to inject an issue under Sections 1(4) and 15(3) of the Act notwithstanding the fact that complainants abandoned their allegation of a violation of Sections 1(4) and 15(3) of the Act following receipt of the examiner's proposed report. Moreover, such evidence was also presented in complainants' petition of January 21, 1963, for a further hearing and denied by the Commission's order of July 12, served July 30, 1963. This paragraph should, therefore, be stricken.

[fol. 791]

VI.

Issues Presented Are Not Sui Juris

Petitioner asserts that the issues presented in this proceeding are *sui juris* and that the Commission has not previously passed upon the complainants' "connecting line" status within the meaning of Section 3(4) of the Act, and, therefore, its petition should be granted.

The issue presented under Section 3(4) of the Act is not *sui juris*. Both the Commission and the courts have held that connecting lines are those which either have a direct physical connection or which make up a through route. *Atlantic Coast Line R. R.* v. *United States*, 283 U.S. 288, 293 (1932). See also *Atlantic Coast Line R. R. Co.* v. *Southern Ry. Co.*, I.C.C. Dkt. No. 31915, and *Atlantic Coast Line R. R. Co.* v. *Southern Ry. Co.*, I.C.C. Dkt. No. 31797, embracing *Atlanta and West Point R. R. Co.* v. *Southern Ry. Co.*, I.C.C. Dkt. No. 31840, decided April 22, 1963.

Finally, complainants' "connecting line" status within the meaning of Section 3(4) of the Act has already been

presented to the full Commission by complainants' petition for reconsideration by the full Commission filed March 21, 1963, and disposed of by the Commission's order dated July 12 and served July 30, 1963, which concluded this proceeding.

[fol. 792] Conclusion

For the reasons stated, the petition of the United States for leave to intervene should be denied because it fails to comply with the Commission's General Rules of Practice and because the matter is now moot due to the Commission's order of July 12, served July 30, 1963, which finally concluded this proceeding.

Respectfully submitted,

Earl F. Requa, Frank S. Farrell.

Due Date: August 19, 1963

[fol. 793] Certificate of Service (omitted in printing).

[fol. 794] Service Date
September 9, 1963.

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 33679

THE WESTERN PACIFIC RAILROAD COMPANY, et al.

vs.

CAMAS PRAIRIE RAILROAD COMPANY, et al.

ORDER—August 9, 1963

In the Matter of Petition for Leave to Intervene

Present: Laurence K. Walrath, Chairman, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, petition filed July 26, 1963, on behalf of United States of America, through Department of Justice, for

leave to intervene for the purpose of petitioning the entire Commission for reconsideration of the Report and Order of Division 2 and to be heard on oral argument, and reply thereto of the Southern Pacific Company filed August 2, 1963.

It is ordered, That the aforesaid petition be, and it is hereby, denied for the reasons that the entire Commission by order dated July 12, 1963, denied complainants' petitions for further hearing, reconsideration and oral argument and the matter is now administratively final and that the contentions sought to be advanced by the United States of America in substance were litigated fully before and considered by Division 2 and the Commission and no apparent good purpose would be served in reopening the proceeding for further consideration of the matter.

It is further ordered, That a copy of this order be served upon each of the parties to this proceeding.

Dated at Washington, D. C., this 9th day of August, A. D., 1963.

By the Commission, Chairman Walrath.

Harold D. McCoy, Secretary.

(Seal)

[fol. 796]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I.C.C. Docket No. 33679

[Title omitted]

MOTION OF UNION PACIFIC RAILROAD COMPANY, DEFENDANT, FOR THE INTERSTATE COMMERCE COMMISSION TO DENY OR REJECT THE PETITION OF THE UNITED STATES OF AMERICA FOR LEAVE TO INTERVENE—Served August 9, 1963

The United States of America, through the Department of Justice, filed its petition on or about July 26, 1963, for leave to intervene in the above-entitled proceeding for the

purpose of supporting the complainant, The Western Pacific Railroad Company, by petitioning the entire Commission for reconsideration of the report and order of Division 2.

Rule 1.72(b) of the Commission's General Rules of Practice provides that a petition for leave to intervene in any proceeding should be filed prior to or at the time the proceeding is called for hearing, but not after, except for good cause shown. The hearing in this proceeding having been held in San Francisco from May 8 to May 10, 1961, it is [fol. 797] incumbent upon the Department of Justice to show good cause for waiver of Rule 1.72(b).

The Department of Justice recites in its petition that it had no knowledge of this proceeding until the same was brought to its attention following the Commission's order of February 14, 1963, designating this matter as one involving an issue of general transportation importance. This is the only explanation for failure to comply with Rule 1.72(b) and is not sufficient justification for a five-month delay in indicating interest in a Commission proceeding that was obviously in its latter stages.

The purpose of the Department of Justice's requested intervention is to file a petition for reconsideration to the entire Commission in support of the position of the Western Pacific. The Commission's order of February 14, 1963—of which the Department concededly had knowledge—provided on its face that petitions for reconsideration were to be filed within 30 days of February 20, 1963. The Department does not attempt an explanation of its failure to petition for intervention or to seek an extension of the terms of this order despite actual notice of the Commission's procedural timetable. The very purpose of the Commission's procedural regulations would be violated by permitting the Department of Justice to intervene at this stage some four months after the time for filing petition for reconsideration and almost one month after the Commission's order finally terminated this proceeding.

[fol. 798] The Western's Pacific's petition for reconsideration was denied by the entire Commission by its order of

July 12, 1963, and to permit the Department of Justice to intervene for the purpose of filing a petition for reconsideration on identical grounds would be tantamount to a successive petition for reconsideration, would allow the Western Pacific an undue procedural advantage and would run counter to orderly administrative process.

Wherefore, the Union Pacific Railroad Company, defendant herein, urges that the petition of the Department of Justice for intervention be denied in the absence of good cause shown for failure to comply with the requirements of Rule 1.72(b) or, in the alternative, that the petition for intervention be rejected since this proceeding was terminated by the Commission's order of July 12, 1963.

Respectfully submitted,

H. E. Roos, John J. Burchell, William P. Higgins, Attorneys for Union Pacific Railroad Company, Defendant.

Due Date: August 15, 1963.

1416 Dodge Street, Omaha, Nebraska.

[fol. 799] Certificate of Service (omitted in printing).

[fol. 802]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I.C.C. Docket No. 33679

[Title omitted]

REPLY OF DEFENDANTS NORTHERN PACIFIC RAILWAY COMPANY, CAMAS PRAIRIE RAILROAD COMPANY AND WALLA WALLA VALLEY RAILWAY COMPANY TO PETITION OF THE UNITED STATES TO REOPEN PROCEEDINGS—Served August 12, 1963

Come now the defendants Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company and reply to the petition of the United States to reopen this proceeding for the purpose of

considering the recent petitions of the United States for leave to intervene and for reconsideration by the full Commission and state as follows.

[fol. 803] Preliminary Statement

This proceeding which began on February 10, 1961, involves an attempt by The Western Pacific Railroad Company and its short-line subsidiaries,[1] hereinafter called "complainant," to compel the establishment of additional through routes between points in California served by the complainant or The Atchison, Topeka and Santa Fe Railway Company and points in Oregon, Washington and Idaho served by the defendants Northern Pacific Railway Company and the Union Pacific Railroad Company and their short-line connections via Bieber, California, and Portland, Oregon. The complainant alleged that the defendants had violated both Sections 1(4) and 3(4) of the Act and sought an affirmative order of the Commission requiring the establishment of through routes and joint rates between the points involved.

Following a full hearing, briefs, exceptions and replies thereto, Division 2, in a well considered and carefully reasoned report and order, served August 2, 1962, found that the public interest did not require the establishment of the through routes and joint rates sought under Sections 1(4) and 15(3) of the Act and that, further, such routes would shorthaul the defendants without their consent in violation of Section 15(4) of the Act. The Division further found [fol. 804] that the complainant was not a "connecting line" of the defendants within the meaning of Section 3(4) of the Act and that, moreover, even if complainant were a connecting line of the defendants, the evidence of record did not establish the necessary similarity of circumstances and conditions which would justify equality of treatment at the Portland gateway.

Complainant apparently agreed with Division 2 that the establishment of additional through routes and joint rates

[1] The Sacramento Northern Railway and the Tidewater Southern Railway Company.

were not required or desirable in the public interest because in its first petition for reconsideration filed August 29, 1962, it abandoned its Section 1(4) allegation and raised essentially only two points, both relating to Section 3(4) of the Act; namely, (1) that it was a connecting carrier of the defendants at the Portland gateway despite the fact that its line does not come within less than 490 miles thereof and that, admittedly, through routes do not presently exist, and (2) that the evidence of record required the Commission to find a similarity of circumstances and conditions as between the routes sought and the existing routes, thus requiring equality of treatment. Replies were filed thereto, and Division 2, acting as an appellate division, denied the petition on January 18, 1963.

Three days later complainant filed a petition for waiver of the Commission's rules to permit the filing of a petition submitted therewith for a further hearing. Replies were filed thereto. On January 30, 1963, complainant filed a peti- [fol. 805] tion seeking a finding that an issue of general transportation importance was involved, and on February 14, 1963, the Commission issued its order finding that an issue of general transportation importance was involved. Complainant then filed a second petition for reconsideration on March 21, 1963, which again raised the same two points as its earlier petition for reconsideration. Replies thereto were filed by the parties on April 29 and May 13, 1963. By order dated July 12 and served July 30, 1963, the Commission denied complainant's petition of January 21, 1963, for a further hearing, petition of March 21, 1963, for reconsideration, and request for oral argument. In the absence of further action by the Commission, this order is administratively final and terminates the proceeding.

Petitioner now seeks to vacate the Commission's final order for the purpose of having the Commission reconsider the same two points that had been previously raised and twice considered by Division 2 and unanimously rejected and further considered by the full Commission and rejected; namely, (1) that complainant is a "connecting line" of the defendants at the Portland gateway within the meaning of

Section 3(4) of the Act despite the fact that its line does not come within 490 miles thereof and that, admittedly, through routes do not presently exist, and (2) that the evidence of record requires the Commission to find a similarity of circumstances and conditions as between the routes which complainant seeks to open and the existing [fol. 806] routes, thus requiring equality of treatment at the Portland gateway. Petitioner has not sought reconsideration of the Commission's action under Sections 1(4) and 15(3) of the Act, and we can therefore assume that it agrees with the complainant that the establishment of such rates and routes are not necessary or desirable in the public interest and, moreover, the opening of such routes would shorthaul the defendants in violation of Section 15(4) of the Act.

Admittedly, the Commission has, even at this late date, the power to vacate its final order and to once again reconsider the two points raised. However, petitioner has presented no additional evidence or authorities other than those already presented by the complainant and carefully considered on two occasions by Division 2 and then by the entire Commission. We, therefore, submit that this petition is completely without merit and should be denied.

Argument

I.

Petitioner's Status Not Unique

Petitioner asserts that its interest is independent of that of the parties and that its views "could assist the Commission in reaching a decision more informed" than is otherwise possible. (Pet. Par. 2). Implicit in this statement is the assertion that petitioner either enjoys a unique status not enjoyed by other litigants or that it enjoys greater [fol. 807] wisdom than other litigants because its insight is not clouded by self-interest.

If the petition in intervention is granted, the United States would, to all intents and purposes, become a com-

plainant in this proceeding and, as such, entitled to the same relief as granted the complainant in the case in which the intervention is filed. *Raymond Bag Co.* v. *Atchison, T. & S. F. Ry. Co.*, 196 I.C.C. 487, 488; *General Motors Corp.* v. *Pennsylvania R. Co.*, 200 I.C.C. 679. The Department of Justice enjoys no greater standing before the bar of this Commission than that of any other litigant. The statement of the Supreme Court in *Vinson* v. *Washington Gas Co.*, 321 U.S. 489, 498 (1944), with respect to the Administrator of the Office of Price Administration of the United States seems particularly apropos:

> "It would seem then that, in the absence of clear legislative mandate to the contrary, the petitioners should not possess greater rights than other intervenors."

With respect to the same agency, the court stated in *I. C. C.* v. *Jersey City*, 322 U.S. 503, 523 (1944):

> "The scope of proper judicial review does not expand or contract, depending on what party invokes it. It is as narrow now as it was when appealed to by the Company. * * * If Congress desires to grant its own agencies greater privileges of judicial review than have been allowed to private parties it is at liberty to do so, but it is not for the Court to set aside, without legislative command, its slow-wrought general principles which protect the finality and integrity of decisions by administrative tribunals."

The points raised and authorities cited by the petitioner have already been fully presented by the complainant. The [fol. 808] fact that no additional evidence or authorities are presented by the petitioner, other than those already fully considered by the Commission, would appear to indicate that such assistance as petitioner is able to offer has already been afforded the Commission in the disposition of this proceeding.

II.

The Commission Properly Construed Section 3(4) of the Act

Petitioner asserts that intervention was sought because of the "unique importance" of the case and also because it believes that the Commission in its construction of Section 3(4) of the Act had "accomplished its substantial repeal." (Pet. Par. 5).

The Commission fully recognized the importance of this proceeding in its order of February 14, 1963, finding that an issue of general transportation importance was involved. So far as the second point raised, the term "connecting lines" and "connecting therewith" have been contained in the Interstate Commerce Act since its inception. (24 Stat. L. 380). The duty imposed under Section 3(4) of the Act with respect to connecting lines is two-fold; namely, to provide proper facilities for the interchange of traffic, and to avoid discrimination in rates and charges. The critical language, namely, "connecting lines" as it pertains to rates and charges has not changed during this entire period.

The Commission has properly held that connecting lines [fol. 809] are those which either have a direct physical connection or which make up a through route in accordance with the holding of the Supreme Court in *Atlantic Coast Line R. R.* v. *United States,* 284 U.S. 288, 293. The Commission has also adopted the same definition of the term "connecting line." Complainant has never contended that through routes presently exist. It has, however, insisted that it had either (1) a direct physical connection with the defendants through other lines despite the fact that it did not come within 490 miles of Portland or (2) that a direct physical connection was not required to come within the purview of Section 3(4) of the Act. At no point has either complainant or petitioner defined the term "connecting line." Petitioner would have the Commission ignore the adjective "connecting," thus permitting Section 3(4) to be invoked by any line in the United States against any other line regardless of their proximity or location and regard-

less of whether they actually participated in providing through transportation service. Such a construction would bring Subparagraph (4) of Section 3 in direct conflict with Subparagraph (1) of the same section because Subparagraph (1) cannot be invoked by any other carrier. However, this limitation which was added by the Transportation Act of 1940 would be meaningless if the adjective "connecting" were eliminated from Subparagraph (4) of Section 3 of the Act by the administrative construction petitioner advocates. (54 Stat. L. 902).

[fol. 810] The construction of Section 3(4) of the Act, adopted by the Commission in the instant proceeding, is supported both by reason and authority. The term "connecting line" has had an established meaning since the creation of this Commission. The ill-conceived construction urged by petitioner would literally open a Pandora's box and ultimately lead to the most wasteful transportation imaginable. It is difficult, indeed, to understand how the petitioner can advocate such a patently unsound construction of this most basic provision of the Act.

The petitioner further asserts that the Commission applied an improper standard to measure the similarity of circumstances and conditions between the existing and the sought routes. However, even petitioner recognizes that as to points east of the Cascade Mountains the existing routes are faster and more direct than those sought by complainant. (Pet. Recon. 2). Petitioner further concedes that substantially similar circumstances and conditions must be found before equality of treatment is required under Section 3(4) of the Act. (Pet. Recon. 22). Petitioner apparently recognizes that when the sought routes are compared in their entirety with the existing routes, there is substantial dissimilarity because it seeks, as did the complainant in its two petitions for reconsideration, to compare the routes north of Portland, Oregon, only and to ignore the routes south thereof. This is certainly a tacit recognition of the dissimilarity of the sought routes when compared in their entirety, as they must be, with the [fol. 811] existing routes.

The allegedly prejudiced routes which complainant sought extended between points in California on the Santa Fe or Western Pacific through Bieber via the Portland gateway to points in Oregon, Washington and Idaho on the Northern Pacific and Union Pacific and their short-line connections. The allegedly preferred routes extended between stations on the Southern Pacific in California and stations on the Northern Pacific and Union Pacific and their short-line connections in Oregon, Washington and Idaho. Such routes must be considered as a whole and cannot be divided north and south of the Portland gateway. This obvious attempt on the part of petitioner to subvert the fundamental requirements of Section 3(4) of the Act is contrary to all reason and authority. It is well established that both the preferred and the prejudiced routes must be considered as a whole. See *Denver & R. G. W. Co.* v. *Union Pac. R. Co.*, 287 I.C.C. 611, 657, 658.

The Commission, the shipper and the defendants are obviously just as interested in the service to be provided north of Portland, Oregon, as they are the service south of Portland, Oregon. It is the entire route that is sought and not just a portion thereof, and, therefore, the routes cannot be atomized, as petitioner here seeks, for the purpose of establishing the necessary similarity of circumstances and conditions to comply with Section 3(4) of the Act. This same argument has been twice considered by Division 2 and rejected and then considered by the full Commission and rejected.

[fol. 812]

III.

The Commission Has Fully Complied with the Administrative Procedure Act

Petitioner further asserts that the Commission's order of July 12, served July 30, 1963, fails to comply with Section 17 of the Act as well as its own regulations and the Administrative Procedure Act. (5 U.S.C.A. §1001 et seq.). Petitioner apparently contends that because the Commission found that an issue of general transportation impor-

tance was involved, the Commission was therefore obligated to grant the complainant's petition for reconsideration. Nothing could be further from the fact.

Petitions for rehearing before administrative bodies are addressed *to their own discretion. I. C. C.* v. *Jersey City, supra,* 517; *Baltimore & O. R. Co.* v. *United States,* 100 F. Supp. 1002, 1012. The order of Division 2 dated January 18, 1963, denying the complainant's first petition for reconsideration was administratively final. (49 U.S.C.A. Sections 17(6) and (9); Rule 1.101(a)(2)). However, once the Commission entered its order of February 14, 1963, finding that an issue of general transportation importance was involved, the administrative finality of the Division's order was suspended pending the further ruling of the Commission on the subsequent petition for reconsideration. (Rule 1.101(a)(2)). Complainant's petition for reconsideration by the full Commission was addressed to the discretion of the Commission and the Commission, in the sound exer- [fol 813] cise of its discretion, declined to reconsider the matter in accordance with Section 17(6) and (9) of the Act and its own General Rules of Practice. (Rule 1.101 (a)). This order is now administratively final under Section 17(9) of the Act.

Petitioner apparently labors under the misapprehension that the Commission has no discretion in this matter and once an issue of general transportation importance is announced, the Commission is *ipso facto* compelled to reconsider the prior action of the division. The finding of an issue of general transportation importance pursuant to Rule 1.101(a) simply authorizes the filing of a further petition for reconsideration. In the absence of such a finding, the second petition would have been a successive petition within the purview of Rule 1.101(f) and, therefore, would not have been entertained. However, because an issue of general transportation importance was found, the petition was entertained and declined.

The matter of the Commission's disposition of a request for reconsideration and for additional hearings is peculiarly within its province and will not be disturbed by the courts

on appeal in the absence of "fundamental unfairness or plain abuse of discretion." *I. C. C.* v. *Jersey City, supra,* 517; *Village of Candor* v. *United States,* 151 F. Supp. 889, 894. It is therefore abundantly clear that the Commission can, in the exercise of its discretion, decline to reconsider a decision of a division.

[fol. 814] Petitioner further labors under the misapprehension that the Commission is required to state the grounds for its denial of a petition for reconsideration. Again, this is simply not the law. The Commission is not required to state the grounds for a denial of a petition for rehearing and reargument because the matter rests entirely within the discretion of the Commission. *Southern Bakers Association* v. *United States,* 124 F. Supp. 600, 604; *Carolina Scenic Coach Lines* v. *United States,* 59 F. Supp. 336. The Commission's usual practice is not to explain why rehearing or reargument has been denied. Only in the rarest cases has it departed from its customary practice and explained the reasons why rehearing and reargument have been denied. For the exception to the general rules, see *Divisions of Freight Rates,* 156 I.C.C. 94.

We therefore submit that the report and order of Division 2 and the Commission's order of July 12, served July 30, comply in all respects with Section 17 of the Act, the applicable provisions of the Administrative Procedure Act (5 U.S.C.A. 1001 et seq.), and the provisions of its own General Rules of Practice, 1.101, and that the latter order is administratively final.

IV.

Final Order of the Commission Should Not Be Set Aside in the Absence of a Manifest Injustice

Petitioner here seeks to intervene two and one-half years [fol. 815] after the action was commenced, more than two years after the hearing was held, and two weeks after the Commission has acted upon its final order in this proceeding. Petitioner requests that the proceeding be reopened solely for the purpose of having the Commission reconsider

two legal points, both of which have been fully presented and adequately briefed by the complainant, twice considered by the Division and once by the full Commission because this petitioner believes that the Commission has erroneously construed Section 3(4) of the Act. The petitioner tacitly recognizes that the sought routes are not required in the public interest by failing to seek reconsideration of the Commission's action under Section 1(4) of the Act.

Petitioner, of course, is not a party of record and, therefore, lacks standing to file this petition. Moreover, complainant could not file such a petition for reconsideration because it would constitute a successive petition submitted upon substantially the same grounds as the former petition which has been considered and denied by the full Commission. (Rule 1.101(f)). Therefore, this petitioner who is not a party to the proceeding here seeks to file a petition which complainant itself could not file and which the Commission would not entertain.

While, admittedly, the Commission has jurisdiction to reopen this proceeding, such jurisdiction should be "sparingly exercised." *Sprague* v. *Woll,* 122 F. 2d 128, 130. [fol. 816] Petitioner is in the position of an intervenor before a court who seeks leave to intervene after the entry of final judgment. The courts of equity have been extremely liberal in allowing intervention. However, it is clear that at this point intervention would not be granted by a court, even in an equity proceeding. In *United States* v. *Northern Securities Co.,* 128 F. 808, the court states as follows at page 810:

> "Applications for leave to intervene in a case after the entry of a final decree are very unusual. They are never granted as a matter of course, and, owing to the tendency of such applications to occasion delay and prolong the existing litigation, they ought not to be granted unless it is necessary to do so to preserve some right which cannot otherwise be protected, or to avoid some complication that is liable to arise."

See also *Baltimore Trust Co.* v. *Interocean Oil Co.*, 30 F. Supp. 484, and *Caldwell* v. *Guardian Trust Co.*, 26 F. (2d) 218, 222.

If parties are permitted to intervene and to file petitions for reconsideration which even parties of record are, under the rules of procedure, barred from filing, an administrative proceeding would never be concluded. Confronted with similar situations, the courts have said: "Under such procedure, litigation would be without end." *Roberts* v. *Metropolitan Life Ins. Co.*, 94 F. 2d 277, 281.

Conclusion

Petitioner apparently concedes that the Commission properly refused to order the establishment of additional [fol. 817] through routes pursuant to Sections 1(4) and 15(3) of the Act. The sole basis for its petition in intervention and for reconsideration and, now, to set aside the order of the Commission dated July 12 and released July 30, 1963, is that the Commission refused to do indirectly under Section 3(4) of the Act that which petitioner apparently concedes it could not do directly under Section 1(4) and 15(3) of the Act. Petitioner has presented no new evidence or authorities but has simply reiterated two points which have been twice considered by Division 2 and then by the full Commission.

If petitioner has a right to intervene at this point to require the Commission to reconsider these same two points, "there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening." *I. C. C.* v. *Jersey City, supra*, 514. These petitions for intervention, for reconsideration and to set aside the Commission's final order are filed not as a matter of right but are simply pleas addressed to the Commission's discretion and as such, should, in the exercise of the Commission's sound discretion, be summarily denied.

The petition of the United States to set aside the Commission's order which is now administratively final has

[fol. 818] wholly failed to demonstrate any error of fact or law and should therefore be denied.

Respectfully submitted,

Earl F. Requa, Frank S. Farrell.

Due Date: August 28, 1963.

[fol. 819] Certificate of Service (omitted in printing).

[fol. 821]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

REPLY OF UNION PACIFIC RAILROAD COMPANY, DEFENDANT, TO PETITION OF THE UNITED STATES TO REOPEN PROCEEDING—Served August 16, 1963

Comes now Union Pacific Railroad Company, defendant, and replies to the petition of the United States, by the Department of Justice, requesting the Commission to vacate its final order of July 12, 1963, to reopen this proceeding for the purpose of accepting the petition of the Department of Justice for reconsideration and for other relief.

I.

This proceeding was terminated administratively by Commission order of July 12, 1963, served July 30. On August 7, 1963, the United States, by the Department of Justice, filed a petition requesting the Commission to vacate its order of July 12 and to reopen the proceeding for the purpose of reconsideration.

The Department of Justice is not a party to this proceed-[fol. 822] ing—which it has characterized as a private proceeding between private persons—and did not indicate any interest therein until after entry of the Commission's final order. The Department has no real interest in this

matter. While purporting to speak on behalf of the United States, it does not allege actual injury to governmental shippers such as the General Services Administration or the Department of Defense.

As the sole basis for its request that the Commission vacate its final order and reopen the proceeding the Department of Justice asserts that its participation will allow the Commission to reach a more informed decision. There is nothing in the pleadings filed by the Government to support this contention. No new evidence is offered and no new issues are presented by the Department. The position of the Department is in support of The Western Pacific Railroad Company, principal complainant, and the petition for reconsideration offered by the Government is no more than a re-presentation of the same issues and the same authorities presented repeatedly and thoroughly by the Western Pacific at each stage of this prolonged proceeding.

The Western Pacific will not be prejudiced by the refusal of the Commission to reopen this proceeding and reconsider matters reviewed twice by Division 2 and reargued to the entire Commission in the complainants' petition for reconsideration. No governmental agency actually shipping freight traffic will be injured by the refusal of the Commission to reopen the proceeding. This complaint has run the full scale of Commission consideration and all facts, [fol. 823] issues and authorities that the petitioning Department of Justice would assert have been presented by the complainants. Simply put, there is no sound reason why the Commission should take the drastic step of setting aside its final order at the request of the Department of Justice.

In one of its earliest reported decisions, *In Re The Petition of Produce Exch. of Toledo,* 2 I.C.C. 588, 592, the Commission expressed the following policy in denying the petition for reopening by a nonparty:

> "After such a case so presented has been decided by the Commission, it would be an anomaly in proceedings of this character, which are judicial in their nature, for

> a re-hearing to be granted and the case subsequently opened by the Commission at the instance of one who was not a party to the original proceeding. * * * We are now asked on the application of The Produce Exchange of the city of Toledo, which was not a party to that proceeding, but which had the opportunity to have been, if it had so desired, to set aside all that we did in that case in order that the questions involved in it may be again presented and heard and reconsidered by us. We know of no authority conferred upon us to grant a re-hearing upon such an application. * * *"

Again in *Traffic Bureau, Merchants' Exchange* v. *C., B. & Q. R.R. Co.*, 14 I.C.C. 510, the Commission declined to reopen a closed case at the request of parties not of record, advancing reasons equally applicable to the instant case:

> "The question involved has been before the Commission since 1903 and has been considered in every phase. No fact is stated in the extensive and able briefs presented in support of these petitions which was not already familiar to the Commission. No argument is advanced which has not been previously presented. While these parties have not at former stages of this discussion appeared upon the record, the interests which they represent have been fully appreciated and considered. * * *"

[fol. 824]

II.

The attempt of the Department of Justice to intervene and secure reopening of this proceeding can perhaps be explained by its apparent misunderstanding of the evidence and the findings of Division 2. Certainly, in its petition for reopening, the Department has repeatedly erred in paraphrasing the findings of Division 2.

The statements on pages 4 and 5 of the petition for reopening, while not particularly relevant to the Section 3(4) issue, attempt to cast the Division's findings in a far stronger light than the language of the report itself. Divi-

sion 2 did not acknowledge that in most cases the Western Pacific was unable to locate new industries along its line, nor did the report acknowledge an annual loss of 25,000 carloads by Western Pacific. According to the Department, the report of Division 2 did not "dispute" testimony regarding industrial and economic development in the Pacific northwest; it is not the function of the Commission to "dispute" evidence but to evaluate evidence and weigh its effect. The most glaring error by the Department, however, is its attempt to relate shipper testimony to the Section 3(4) discrimination issue rather than the Section 1(4) plea for routes and rates to which the testimony was directed.

The Department also reveals a misunderstanding of Division 2's conclusions of law. The Division did not rely on the short-haul restriction contained in Section 15(4) of the Act to dispose of the Section 3(4) issue but stated in con- [fol. 825] cise terms that Section 3(4) can be invoked only if there is rate discrimination between connecting lines that are similarly situated. Section 3(4) does not prohibit differing rate treatment between all rail carriers no matter how or where situated. Instead, it insures that carriers physically connecting or those participating in through routes, under similar circumstances, will treat each other equally insofar as rate concurrences are concerned. This not a revolutionary holding, but one amply supported by Commission and court precedent. Section 3(4) is not a back door for the establishment of new routes and joint rates; that is the purpose of Section 15(3) of the Act. The interpretation of Section 3(4) urged by the Department of Justice would accomplish the substantial repeal of Section 15(3) by rendering it surplus.

Nothing the Department has said persuades that Division 2 erred in finding that there was no violation of Section 3(4) and also that there was no showing that establishment of the routes and joint rates requested by the Western Pacific is necessary or desirable in the public interest.

III.

The Department of Justice asserts that there appears to be no identifiable decision in this proceeding. It professes to be unable to determine whether the Commission has denied the relief sought by the Western Pacific under Sections 1(4) and 15(3) of the Act or only the relief sought under Section 3(4).

[fol. 826] Completely inconsistent with this position, however, is the fact that the Department has had no difficulty in recognizing that the report and order of Division 2 constitute the decision of the Commission in this proceeding, as is evident from the pages of criticism of the Division 2 report in the petition for reopening.

Apparently the Department feels that the Commission should have specifically adopted the report and order of Division 2. Express adoptive language is not necessary under Section 17 of the Interstate Commerce Act and the Commission's general rules of practice, however, and it is self-evident that the Commission's order of July 12, 1963, denying complainants' petition for reconsideration, leaves the report and order of Division 2 as the final, effective Commission decision.

Section 17(6) of the Interstate Commerce Act provides that the Commission may, by its general rules, establish limitations upon *the right to apply* for rehearing, reargument or reconsideration of a decision, order or requirement of the Commission, or of a Division, so as to confine such right to proceedings involving issues of general transportation importance. In this instance the Commission, by its order of February 14, 1963, designated the proceeding as one involving an issue of general transportation importance and granted complainants *the right to apply* for reconsideration.

Under Section 17(6) rehearing, reargument or reconsideration *may be granted if sufficient reason thereof be* [fol. 827] *made to appear.* In its order of July 12, 1963,

the entire Commission, after receipt of complainants' petition for reconsideration, denied the petition for the reason that sufficient ground had not been presented to warrant granting the action sought. There need be no detailed explanation of such a negative order. In simple terms, complainants were granted the right to apply for reconsideration, but failed to advance sufficient reasons why reconsideration should be allowed. The Commission denial of the petition leaves the proceeding in the exact status it occupied upon the denial on January 18, 1963, by Division 2 acting as an appellate division, of the complainants' previous petition for reconsideration.

The effect of both orders of denial, that of Division 2 on January 18, 1963, and that of the entire Commission on July 12, 1963, is to leave the report and order of Division 2, decided July 26, 1962, as the definitive decision of the Commission. The decision of Division 2 contains preliminary findings of fact and ultimate conclusions of fact and law sufficiently articulated to acquaint all parties with the grounds upon which the final decision is laid. Upon resort to this decision the Department of Justice will have no difficulty in ascertaining that the Commission has found that complainants have not established discriminatory practices in violation of Section 3(4) of Act, and that the complainants did not prove that the establishment of through routes and joint rates is necessary or desirable in the public interest under Sections 1(4) and 15(3) of the Act.

[fol. 828] Conclusion

WHEREFORE, Union Pacific Railroad Company, defendant herein, urges that the Commission deny the petition of the Department of Justice requesting that the order of July 12, 1963, be vacated and this proceeding reopened for the purpose of considering a petition of the Department for reconsideration, and that the Commission likewise deny the Department of Justice's petition for leave to intervene

and all other relief sought in the petitions of July 26 and August 7, 1963.

Respectfully submitted,

H. E. Roos, John J. Burchell, William P. Higgins, Attorneys for Union Pacific Railroad Company, Defendant.

Due date: August 28, 1963.

1416 Dodge Street, Omaha, Nebraska.

Certificate of Service (omitted in printing).

[fol. 830]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

REPLY OF INTERVENER SOUTHERN PACIFIC COMPANY TO PETITION OF UNITED STATES TO REOPEN PROCEEDING—Served August 21, 1963

Comes now intervener Southern Pacific Company and replies to the petition of the United States Department of Justice to the full Interstate Commerce Commission to vacate its order served July 30, 1963, to reopen the proceeding for the purpose of considering petitions of the United States filed July 26, 1963, to hear oral argument if warranted, and to issue a decision stating findings and conclusions and the reason or basis therefor upon all material issues, as well as an order granting or denying the relief sought.

Preliminary Statement

On July 26, 1963, petitioner filed a petition for leave to intervene, and a further petition for reconsideration, in this proceeding. Appropriate replies were subsequently filed by defendants herein and by intervener Southern [fol. 831] Pacific Company. To the knowledge of intervener

Southern Pacific Company, intervention has not to date been granted. Nevertheless, on August 7, 1963, the Department of Justice filed still another petition, which is the subject of this reply. There have been numerous pleadings heretofore filed in this proceeding, all as shown in intervener Southern Pacific Company's reply to the two previous petitions of the Department of Justice, dated August 1, 1963.

Intervener Southern Pacific Company here repeats all of the matters set forth in said reply and incorporates them herein by reference the same as though fully set forth at length.

1. Petitioner has no standing to file this petition

Petitioner is not a party of record, and lacks standing to file this petition. It is obvious that complainants themselves could not file a petition seeking reconsideration, because it would constitute a successive petition that has already been considered and denied by the full Commission (Rule 1.101(f)). As pointed out by intervener Southern Pacific Company in its reply to petitioner's petition for leave to intervene and for reconsideration, if such a course of action were allowed it would mean that in any Commission proceeding where a complainant had exhausted its remedies before the Commission it could then persuade other persons to file petitions based upon the very grounds that complainant had already set forth, argued and lost. Such a procedure could continue ad infinitum. There must be an end to litigation at some time. As the Commission said in *Cattle Raisers' Ass'n* v. *Chicago, B. & Q. R.R.*, 12 I.C.C. 6:

> [fol. 832] " . . . We feel that when an order has been made the case before this Commission should be treated as closed, and that it ought not to be opened except upon a showing that some wrong or injustice has been or will be effected."

Petitioner sets forth no reason why it should be entitled to relief that is now barred to complainants, and the fact that

petitioner is a branch of the Government gives it no special or unique status as a litigant. *Vinson* v. *Washington Gas Co.*, 321 U.S. 489, 498.

Petitioner raises no issue which has not already been urged by complainants, considered by the Commission, and denied. In view of the facts, it is unusual, to say the least, that it now seeks relief under a petition which has in effect already been considered and denied by the Commission.

2. There is an identifiable decision in this proceeding

Petitioner is of the opinion that there is no identifiable decision in this proceeding—evidently believing that since the proceeding has been designated as one involving an issue of general transportation importance the report and order of Division 2 has no administrative finality. Petitioner is wrong. Rule 1.101(a)(3) of the General Rules of Practice of the Interstate Commerce Commission gives the right to apply to the entire Commission for rehearing, reargument or reconsideration of a decision of a division when the Commission has announced or ordered that there is an issue of general transportation importance involved. Complainants in this proceeding were given that right to apply, and the Commission, after considering the petition filed by complainants, ordered that the petition for recon- [fol. 833] sideration and request for oral argument be denied for the reason that sufficient grounds had not been presented to warrant granting the action sought. Upon this action the report and order of Division 2 became administratively final. That decision of Division 2 is full and complete and has findings of fact and ultimate conclusions of fact and law sufficient to satisfy the Administrative Procedure Act. As a matter of fact, a reading of the petition filed herein makes it quite obvious that the Department of Justice knows *precisely* what the Interstate Commerce Commission has decided and the only read objection that the Department of Justice has is that it does not agree with the Commission's decision.

Wherefore intervener Southern Pacific Company requests that this Commission summarily deny the petition of the Department of Justice seeking vacation of the order of July 12, 1963.

Respectfully submitted,

Thormund A. Miller, Charles W. Burkett, W. Harney Wilson, Attorneys for Intervener Southern Pacific Company.

San Francisco, Calif., August 21, 1963.

[fol. 834] Certificate of Service (omitted in printing).

[fol. 835]

BEFORE THE INTERSTATE COMMERCE COMMISSION

958731 GHD

September 10, 1963

Mr. John N. Dougherty, Attorney
Department of Justice
Washington 25, D. C.

RE: No. 33679—The Western Pacific Railroad Company, et al. v. Camas Prairie Railroad Company, et al.

Dear Sir:

This has reference to your petition dated August 7, filed on behalf of the United States of America to reopen for reconsideration by the entire Commission the Report and Order of Division 2 in the above proceeding.

By the order dated August 9 and served on September 9, 1963, the petition for leave to intervene was denied, therefore no action will be taken on the petition to reopen for reconsideration.

The original has been placed in the correspondence section of the docket and the balance of the copies are returned.

Respectfully,

Secretary

Enclosures.

[fol. 836] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
Civil Action No. 41779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant.

COMPLAINT—Filed September 20, 1963

Come now plaintiffs, The Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Company, by their attorneys, and for cause of action state:

I.

This is an action brought to enjoin, set aside, suspend and annul a Report and Order of the Interstate Commerce Commission (hereinafter referred to as "Commission") which Report and Order, bearing service date of August 2, 1962 was entered in a proceeding designated as No. 33679, The Western Pacific Railroad Company, et al. v. Camas Prairie Railroad Company, et al., and to enjoin, set aside, suspend and annul a subsequent Order of Commission bearing service date of July 30, 1963 in the identical proceeding. Copies of said Report and Order and Order, which are administratively final, are made a part hereof and in-
[fol. 837] corporated herein by reference and are attached as Exhibits "A" and "B", respectively.

II.

Jurisdiction of this court is invoked under Title 28, United States Code, Sections 1336, 2284 and 2321 through 2325 inclusive.

III.

A. Each of the plaintiffs is a corporation organized and existing under and by virtue of the laws of the State of California, and a part of the same system of railroad corporations, and each such plaintiff has its principal office and place of business at 526 Mission Street, San Francisco 5, California, a location within the Southern Division of the Northern Judicial District of California. Each of the plaintiffs is engaged in business as a common carrier by railroad subject to the provisions of the Interstate Commerce Act, as amended (49 U.S.C. §1, et seq.).

B. Each of the plaintiffs was a party to the Commission proceedings which culminated in the aforementioned Reports and Orders bearing service dates of August 2, 1962 and July 30, 1963, Exhibits "A" and "B", respectively.

IV.

The venue of this proceeding is in this court pursuant to Title 28, United States Code, Section 1398.

V.

United States of America is named as defendant pursuant to Section 2322 of Title 28, United States Code.

VI.

Plaintiffs, and each of them, are in direct competition with Southern Pacific Company, a common carrier by railroad also subject to the Interstate Commerce Act, for traffic moving between points in California and points in the Pacific Northwest states of Oregon, Washington and Western Idaho. Plaintiff, The Western Pacific Railroad [fol. 838] Company has served that area since 1931 as the middle link of a physical railroad route made up by end

to end connections of The Atchison, Topeka and Santa Fe Railway Company, The Western Pacific Railroad Company (plaintiff) and Great Northern Railway. The connection between Santa Fe and plaintiff, The Western Pacific Railroad Company, is at Stockton, California and between such plaintiff and Great Northern at Bieber, California. The route, popularly referred to interchangeably as either the "'Bieber Route" or "Inside Gateway Route" roughly, and generally, parallels the single line route of Southern Pacific Company between Los Angeles, California and Portland, Oregon where both such routes physically connect with Northern Pacific Railway and Union Pacific Railroad Company, both common carriers by railroad subject to the provisions of the Interstate Commerce Act. Portland, Oregon is a principal railroad gateway for interchange of traffic moving between points on the lines of said Northern Pacific and Union Pacific and their short line railroad connections in the states of Oregon, Washington and Western Idaho on the one hand and points on the Southern Pacific, Great Northern, Plaintiffs, and Santa Fe on the other. The Bieber route was expressly authorized by the Commission to be constructed in Great Northern Railway Co. Extension 166 ICC 3 (1930) to provide railroad competition to Southern Pacific Company between California and the Pacific Northwest. Except for an extremely limited number of commodities, the Northern Pacific Railway and Union Pacific Railroad Company and their short line connections have failed and refused to join plaintiff in the establishment of joint through railroad rates through the Portland, Oregon gateway while at the same time they have entered into such arrangements with plaintiffs' competitor, Southern Pacific Company.

Accordingly, plaintiffs, by formal complaint filed with the Commission on February 10, 1961, alleged that the [fol. 839] condition thereby created and maintained was unjust, unreasonable, unjustly discriminatory and unlawful pursuant to the provisions of Sections 1(4) and 3(4) of the Interstate Commerce Act (49 U.S.C. §1(4), 3(4)) and the National Transportation Policy (49 U.S.C. preceding §1) and was depriving the public and the plaintiffs of the use of reasonable through routes at reasonable and non-discrimi-

natory through joint rates between California and points in the Pacific Northwest located on the lines of Northern Pacific Railway and Union Pacific Railroad Company and their short line connections. That complaint named, in alphabetical order, the lines allegedly violating the Act as well as those other lines making up the "Bieber or Inside Gateway" route. Great Northern Railway, the Atchison, Topeka and Santa Fe Railway and Washington, Idaho & Montana Railway Company all agreed to join in the non-discriminatory rates therein sought but Northern Pacific Railway, Union Pacific Railroad Company and their short line subsidiaries refused.

VII.

Hearing was held in San Francisco, California on May 8, 9 and 10, 1961, at which time Southern Pacific Company intervened in support of defendants, Northern Pacific and Union Pacific, therein. Briefs were filed; a Report and Order of the Hearing Examiner finding that defendants therein, Northern Pacific and Union Pacific, had unlawfully and unjustly discriminated against plaintiffs herein in violation of Section 3(4) of Interstate Commerce Act (49 U.S.C. §3(4)) was issued and is attached and incorporated herein by reference as Exhibit "C". Defendants therein, Northern Pacific and Union Pacific, and intervener in their behalf, Southern Pacific, filed exceptions thereto; plaintiffs herein replied; the parties were heard by Division 2 of the Commission in Oral Argument. Under service date of August 2, 1962 the Commission (Division 2) issued the Report and Order attached hereto as Exhibit "A". Plaintiffs timely filed Petition for Reconsideration by said [fol. 840] Division 2. Plaintiffs, subsequently, on the 21st day of January 1963, filed Petition for Further Hearing before Division 2 for the purpose of introducing newly developed evidence. Under date of January 24, 1963, Division 2 issued its order denying plaintiffs' Petition for Reconsideration. Plaintiffs timely filed a petition with the Full Commission seeking a declaration that this was a matter of General Transportation Importance, thereby allowing further petition to the Full Commission. Under date

of February 14, 1963, the Commission found this to be a matter of General Transportation Importance and plaintiffs thereupon timely filed Petition for Reconsideration by the Full Commission. The United States of America, through the Department of Justice, on the 26th day of July, 1963, filed with the Commission a Petition for Leave to Intervene in support of the relief sought by The Western Pacific Railroad Company under Section 3(4) of the Interstate Commerce Act, together with a petition for such reconsideration and sought Oral Argument.

On July 30, 1963, plaintiffs were served with the Order of the Commission, attached hereto as Exhibit "B". On August 7, 1963, the United States of America, through the Department of Justice, filed with the Commission a petition to vacate the Commission's Order served July 30, 1963; to reopen the proceeding; to hear oral argument; and to issue a decision stating findings and conclusions and the basis therefor upon all material issues. On September 9, 1963, the Commission issued its Order denying the petition filed by the United States of America on the 26th day of July 1963, holding that this matter is administratively final. On the 10th day of September, the Commission, through its Secretary, refused to accept for filing the August 7, 1963 petition of the United States of America.

[fol. 841] VIII.

In its Report and Order, attached hereto as Exhibit "A", the Commission found that the admittedly discriminatory practices of Northern Pacific Railway and Union Pacific Railroad Company were not in violation of the provisions of Section 3(4) (49 U.S.C. §3(4)) because The Western Pacific Railroad Company does not, itself, physically connect with said railroads at Portland, Oregon nor does it presently enjoy a full line of through rates with said railroads, and hence was not entitled to invoke the protective provisions of Section 3(4); and further that in any event the discrimination is not unlawful because operating conditions over the Bieber route south of Portland, Oregon are allegedly not as favorable as operating conditions over the route of Southern Pacific Company south of Portland,

Oregon; Commission further found that there was a lack of public interest in the matter since, in the past, the shippers had not instituted a "determined campaign" seeking voluntary publication of the non-discriminatory rates over the Bieber route of plaintiffs.

IX.

Plaintiffs complain that the Report and Order of the Commission (Division 2) bearing service date of August 2, 1962, attached as Exhibit "A", is unlawful for the following reasons:

(a) The Report and Order is directly contrary to and in violation of the express provisions of Section 3(4) of the Interstate Commerce Act (49 U.S.C. §3(4)) because it incorrectly holds, as a matter of law and fact, that The Western Pacific Railroad Company is not a "connecting line" as that term is used in said statute and therefore as a matter of law is not entitled to seek relief thereunder.

(b)

(1) The Report and Order is further in error and contrary to law, and in violation of the provisions of Section [fol. 842] 3(4) of the Interstate Commerce Act (49 U.S.C. §3(4)) in that it applies as the test of lawfulness of admittedly discriminatory practices the alleged lack of similarity of physical operating conditions over the preferred and prejudiced rail lines south of the point of common connection with the lines practicing the discrimination.

(2) The Report and Order is further in error in that it applies such test in an arbitrary and capricious manner and contrary to the evidence introduced at the hearing.

(c) The Report and Order is in error, both in fact and law, in finding that on traffic moving to and from Northern Pacific points located east of the Cascade Mountains plaintiffs herein seek a circuitous routing via Auburn, Washington rather than via the same direct routes used for handling traffic interchanged at Portland, Oregon with Southern Pacific Company.

(d) The Report and Order is in error in law and fact by erroneously, arbitrarily and capriciously failing to separate the evidence and issues as they apply to the various defendants and territories involved in the proceedings before the Commission with the result that ultimate conclusions are based upon completely unrelated, irrelevant and immaterial evidence.

(e) The Report and Order is in error in law and fact in arbitrarily and capriciously rejecting the evidence introduced by shippers of freight, and further in arbitrarily and capriciously finding any significance in the failure of those shippers, and others, to request or demand that Northern Pacific and Union Pacific Railroad voluntarily publish non-discriminatory rates and practices; and is further in error, if it deemed such failure to be of any legal significance in its ultimate conclusions to provide plaintiffs with the requested opportunity of further hearing to prove the fact that subsequent to the Order set forth in Exhibit "A" over one hundred (100) shippers had requested such [fol. 843] rates and that Northern Pacific and Union Pacific had failed to grant such shipper applications for voluntary publication of non-discriminatory rates and practices via the Bieber route.

(f) The Report and Order is in error in its arbitrary and capricious failure and refusal to find that the present discriminatory rate practices of Northern Pacific Railway and Union Pacific Railroad Company force wasteful transportation practices upon plaintiffs and those dependent upon their services as common carriers of freight.

(g) The Report and Order is in error in its arbitrary and capricious failure and refusal to find upon the evidence produced upon the record that the present discriminatory rate practices of Northern Pacific Railway and Union Pacific Railroad Company are directly responsible for a number of important and substantial freight producing industries declining to locate their facilities adjacent to The Western Pacific Railroad Company or its subsidiary rail lines, thereby causing irreparable injury to those lines.

(h) The Report and Order is in error in its arbitrary and capricious violation of the Congressional mandate re-

cited in the National Transportation Policy (49 U.S.C. preceding §1) in that it permits and encourages practices which fail to promote safe, adequate, economical and efficient service or to foster sound economic conditions in transportation and among the several carriers and which fail to encourage the establishment and maintenance of reasonable charges for transportation services without unjust discrimination, undue preferences or advantage.

(i) The Report and Order is in error in its failure to set forth conclusions which are supported by substantial evidence; by adequate findings of fact; or by logical reasoning and does not therefore meet the standards required by law and is contrary to the provisions of Section 8(b) of the [fol. 844] Administrative Procedure Act (5 U.S.C. §1007 (b)) in that it does not contain the required statement of findings and conclusions, as well as the basis therefor, upon the material issues of fact, law or discretion presented upon the record.

X.

Plaintiffs further complain that the Order bearing service date of July 30, 1963, attached as Exhibit "B" is unlawful for the following reasons:

(a) The order erroneously, arbitrarily and capriciously fails and refuses, after the Commission had declared this to be a matter of General Transportation Importance, to reconsider the Report and Order bearing service date of August 2, 1962, attached as Exhibit "A", or to correct any of the alleged errors of law, fact and discretion contained therein.

(b) The Order is in further error in its failure and refusal to set forth conclusions which are supported by substantial evidence; by adequate findings of fact; or by logical reasoning and does not therefore meet the standards required by law and is contrary to the provisions of Section 8(b) of the Administrative Procedure Act (5 U.S.C. §1007(b)) in that it does not contain the required statement of findings and conclusions, as well as the basis

therefor, upon the material issues of fact, law or discretion presented upon the record.

Wherefore, plaintiffs pray:

1. That process may issue against defendant the United States of America.

2. That a court constituted as required by Title 28 of the United States Code, Sections 2284 and 2321-2325 consisting of three judges, be convened.

3. That upon final hearing a decree be entered permanently enjoining, setting aside, annulling and suspending the Report and Order of the Commission bearing ser-
[fol. 845] vice date of August 2, 1962 and the Order of the Commission bearing service date of July 30, 1963 both entered in the Commission's Docket 33679.

4. That upon final hearing and the entering of a decree permanently enjoining, setting aside, annulling and suspending said Report and Order and said Order of August 2, 1962 and July 30, 1963, this matter be remanded to the Commission for further proceedings and the issuance of a Report and Order of the Commission correcting the errors contained in the Commission's Report and Order bearing service date of August 2, 1962 and Order of the Commission bearing service date of July 30, 1963 both entered in Commission Docket 33679.

5. That plaintiffs have such other and further relief in the premises as may be deemed meet and just by this Honorable Court.

E. L. Van Dellen, R. W. Bridges, Leighton Hatch, Walter G. Treanor, By Walter G. Treanor, Attorneys for Plaintiffs.

[fol. 846]

EXHIBIT "A" TO COMPLAINT

[Stamp—Received Aug 3, 1962—Law Department]

INTERSTATE COMMERCE COMMISSION

Service Date
August 2, 1962

No. 33679

WESTERN PACIFIC RAILROAD COMPANY, et al.,

v.

CAMAS PRAIRIE RAILROAD COMPANY, et al.

Decided July 26, 1962

Failure and refusal of defendants to join with complainants and their connecting lines in establishing through routes and joint rates applicable via Bieber, Calif., and Portland, Oreg., on the same basis as those maintained with the Southern Pacific Company via Portland, between points in California, on the one hand, and points in Oregon, Washington, and Idaho, on the other, found not shown to be unjust or unreasonable, nor to result in discrimination. The establishment of such rates and routes found not shown to be necessary or desirable in the public interest. Complaint dismissed.

Walter G. Treanor for complainants.

A. R. Allen and *Clifford Worth* for parties in support of complainants.

A. K. Hinckle for a defendant in support of complainants.

Frank S. Farrell, William P. Higgins, L. W. Hobbs, Frederick G. Pfrommer, Earl F. Requa, and *R. Paul Tjosseni* for defendants.

Charles W. Burkett, Jr., Eugene Garfinkle, and *Thormund A. Miller* for intervener in opposition to complainants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS FREAS, GOFF, AND HERRING

FREAS, *Commissioner*:

Exceptions to the report and order recommended by the examiner were filed by the defendants and the intervener, and the complainants replied. We have heard the parties in oral argument. Our conclusions differ from those recommended. Exceptions and requested findings not discussed herein nor reflected in our findings or conclusions have been considered and found not justified.

By complaint filed on February 10, 1961, The Western Pacific Railroad Company, and its short-line subsidiaries,[1] [fol. 847] hereinafter sometimes collectively called the Western Pacific or complainants, allege that the failure and refusal of the defendants[2] to establish and maintain, between points in California, served by the complainants or in connection with the Santa Fe, and points in Oregon, Washington, and Idaho, served by the defendants, chiefly the Union Pacific and the Northern Pacific, joint through rates over routes through Bieber, Calif., and Portland, Oreg., on the

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[1] The Sacramento Northern Railway (Sacramento Northern) and the Tidewater Southern Railway Company (Tidewater Southern).

[2] The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), Camas Prairie Railroad Company (Camas Prairie), Great Northern Railway Company (Great Northern), Northern Pacific Railway Company (Northern Pacific), Pacific Coast R. R. Co. (Pacific Coast) Spokane International Railroad Company (Spokane), Union Pacific Railroad Company (Union Pacific), Walla Walla Valley Railway Company (Walla Walla), and Washington, Idaho and Montana Railway Company (Washington, Idaho and Montana). The Camas Prairie is jointly owned by the Northern Pacific and Union Pacific. The Spokane is a subsidiary of the Union Pacific, and the Walla Walla is a subsidiary of the Northern Pacific.

same basis as those maintained by the defendants in connection with the Southern Pacific Company (Southern Pacific) through Portland, violates sections 1(4) and 3(4) of the Interstate Commerce Act, and is contrary to the provisions of the national transportation policy. We are asked to prescribe just, reasonable, and nondiscriminatory competitive joint through rates, charges, practices and through routes. We are also asked to hold open this proceeding in the event the parties are unable to agree on divisions, so that the Commission may prescribe divisions.

The Santa Fe, the Great Northern, Pacific Coast, and Washington, Idaho and Montana have indicated their willingness to establish and maintain the routes and rates sought. The Western Pacific, Washington, Idaho and Montana, and numerous shippers and shipper associations presented evidence in support of the complaint, whereas the Union Pacific, Northern Pacific, and Southern Pacific (intervener) presented evidence in opposition.

General location of the railroads concerned.—The complainants operate for nearly 1,000 miles in California and serve such cities as San Francisco, Oakland, San Jose, [fol. 848] Stockton, Sacramento, Modesto, Marysville, Keddie, Bieber, and Oroville. The east-west line of the Western Pacific extends from Salt Lake City, Utah, to the San Francisco-Oakland bay area, with a north-south line extending from Keddie to a connection with the Great Northern at Bieber, 490 miles south of Portland. The Western Pacific connects with the Santa Fe at Stockton, permitting service to and from points in southern California, and also with the Union Pacific at Wells, Nev., and Salt Lake City. So far as the territorial scope of this complaint is concerned, it does not physically connect with the lines of the principal defendants, the Northern Pacific and the Union Pacific, and does not reach the involved interchange point at Portland.

The Great Northern, Union Pacific, and Northern Pacific serve, among others, numerous points in Oregon, Washington, and Idaho. In addition to the connections previously noted, to the extent here important, the Great Northern,

Union Pacific, Northern Pacific, and Southern Pacific connect at Portland; and the Union Pacific and Southern Pacific connect at Ogden, Utah, and Wells. In the northwestern area, the Great Northern and its connections are competitive with the Northern Pacific. In California, the Southern Pacific is competitive with the Western Pacific and the Santa Fe, and the Union Pacific also serves portions of southern California.

Routes.—The two major routes considered herein are hereinafter called the Bieber route and the Southern Pacific route. The former, to Great Northern destinations, has been in existence since 1931. See *Great Northern Ry. Co. Construction,* 166 I.C.C. 3, 170 I.C.C. 399. This route to such destinations consists of the Santa Fe to Stockton, thence the Western Pacific to Bieber, and the Great Northern beyond; or from origins on the Western Pacific, that carrier to Bieber, thence the Great Northern. The Southern Pacific route consists of the Southern Pacific to Portland, thence the Northern Pacific, Union Pacific, or the Great [fol. 849] Northern, depending upon the carrier serving the northwestern destination. The Santa Fe also participates in the Southern Pacific route on certain movements to or from California points.

The routes sought herein generally consist of the Bieber route as above defined over the Great Northern to Portland, thence the Northern Pacific or the Union Pacific depending upon the carrier serving the northwestern destination.

The Union Pacific, whose line reaches California in the Los Angeles area, participates in routes between points in California on the complainants' lines and northwestern points on its line east of Huntington, Oreg., with interchanges at Salt Lake City and Wells. It also has a route between southern California and certain points in the northwest via Salt Lake City and Pocatello, Idaho. The Union Pacific and the Southern Pacific also participate in routes via Wells or Ogden.

Present rate structure.—The Great Northern participates with the complainants[3] in joint through class and commodity rates for application over the Bieber route. These joint rates are generally the same as those maintained by the defendants in connection with the Southern Pacific through Portland. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company also maintains joint rates with the complainants over routes through Bieber. Also, the Union Pacific participates in joint rates with the complainants over routes through Salt Lake City or Wells, similar to those maintained by that defendant with the Southern Pacific over routes through Ogden or Wells.

The defendants have maintained the joint rates with the Southern Pacific through Portland for over 50 years. The Northern Pacific has refrained from establishing joint rates through Bieber with its strongest competitor, and it is fearful that the establishment of such rates would enable the Great Northern to solicit its traffic. The Union Pacific feels that the existing rates are sufficient to meet the needs of the shipping public. These defendants, however, favor addi- [fol. 850] tional rates through Bieber if and when a need therefor is demonstrated. Thus, there are, with some exceptions, no joint rates over the routes sought, and the shipments must move under combination rates, using the rates, local or joint, from and to Portland. These combination rates are generally higher than the joint rates maintained by the defendants with the Southern Pacific.

Traffic may now move over the Bieber route between points on the complainants' lines in California and points in the Northwest served by the Northern Pacific or the Union Pacific and the Great Northern, if interchange facilities with the latter[4] are available at the northwestern point of origin or destination. The charges on such traffic are based on the complainants' and the Great Northern's joint through rates, plus the switching charge for interchange

[3] Also the Santa Fe.

[4] Portland and Bend, Oreg., Vancouver, Chehalis, Seattle, Tacoma, Spokane, and Centralia, Wash., are representative examples of such points.

service, except that the switching charge is absorbed by the Great Northern if the point on the complainants' line has interchange facilities with the Southern Pacific.

Traffic may also move via Portland between points served by the complainants and the Southern Pacific, where interchange facilities exist, and points on the Northern Pacific or the Union Pacific which are not served by the Great Northern. A switching charge is made for the interchange in addition to the joint rate published by the Southern Pacific and the Northern Pacific or the Union Pacific.

The complainants point out that the present rate situation deprives them of an opportunity to participate in the line-haul service on traffic originating on their lines. For instance, the Campbell Soup Company, whose Sacramento plant is located on the Western Pacific, shipped over 150 carloads of traffic to points served exclusively by the Northern Pacific or the Union Pacific in 1959. This traffic moved [fol. 851] over the Southern Pacific route because the combination rates applicable over the route through Bieber exceeded the switching charge and the joint rates in connection with the Southern Pacific.

In 1960, the Campbell Soup Company sought through competitive rates from Sacramento via Bieber to destinations on the Northern Pacific and the Union Pacific or their short-line connections so that its charges might be reduced by avoiding the charge for switching by the Western Pacific. In 1961, the Southern Pacific authorized the absorption of this switching charge. This reduced the shipper's transportation costs, but the Western Pacific still was denied an opportunity to participate in the line-haul movement.

Between points on the Western Pacific and those on the Northern Pacific or the Union Pacific, a number of joint commodity rates are maintained over routes of the complainants' lines to or from a junction point in California with the Southern Pacific, thence that line through Portland and the defendants beyond. The complainants agreed to establish these rates in connection with the defendants over such routes because they are needed to allow shippers located on the complainants' lines to reach markets in com-

petition with other California producers. Otherwise, where switching service is not available at the origins or destinations, the lowest combination rates are charged over any route permitting interchange with the Southern Pacific in California, or the Great Northern and Northern Pacific or Union Pacific in Oregon, Washington, or Idaho.

On canned goods from McHenry, Calif., to Yakima, Wash., the lowest combination is based on Stockton, and applies only over the Tidewater Southern to Stockton, thence the Southern Pacific to Portland, and the Northern Pacific or the Union Pacific to destination. There are canners at Yuba City, Calif., on the Sacramento Northern, but that car-
[fol. 852] rier and the Southern Pacific do not interchange traffic thereat. The lowest rates from Yuba City to Walla Walla, Wash., for example, are combinations over Marysville, Calif., using the local rate of the Sacramento Northern to Marysville and the joint rate of the Southern Pacific and the Northern Pacific or the Union Pacific beyond. These rates deprive the complainants of a line-haul although they originate the traffic.

Between points on the Northern Pacific or the Union Pacific and those on the Santa Fe (except in the San Francisco Bay area), joint rates are maintained over routes including the Southern Pacific. Only higher combination rates are available between the same points over the routes sought herein through Bieber. The complainants argue that this denies to the public the advantages of alternate routes and deprives the Western Pacific of an opportunity to participate in the movement of the traffic.

The complainants now have lower combination rates on forest products from Olympia, Shelton, and other points in Washington on the Northern Pacific to San Francisco Bay points, than the joint rates maintained in connection with the Southern Pacific to the same points. However, the complainants fear that this adjustment is temporary, and that this traffic will again be confined to the Southern Pacific by a reduction of the joint rates.

There are joint commodity rates on cast iron pipe, automobiles, and livestock, in addition to joint class rates, from points on the complainants' lines to points on the lines

of the defendants over the routes sought. The joint rates on cast iron pipe, from Carpenter, Calif., on the Western Pacific to points in Oregon, Washington, and Idaho on the Northern Pacific or the Union Pacific, were established on June 21, 1952, as the result of a complaint[5] filed by the [fol. 853] United States Pipe & Foundry Company. These rates are the same as those in effect to the same points from Decoto, Calif., on the Southern Pacific, with interchange at Portland. The Northern Pacific and the Union Pacific receive the same divisions of these rates north of Portland on the traffic through Bieber as they receive from the joint rates maintained in connection with the Southern Pacific. In 1959 and 1960, respectively, 124 and 154 carloads of this pipe moved.

The joint rates on automobiles from Melrose (Oakland), Calif., and Decoto, on the Western Pacific, are the same as the rates from the same points on the Southern Pacific to destinations on the Northern Pacific or the Union Pacific. These rates became effective on October 4, 1959, following the filing of a complaint, which was dismissed at the request of the complainant. The plant for which these rates were published was never built, and thus there have been no movements.

The joint rates on livestock were established as a result of our order in *American National Live Stock Assn.* v. *Atchison, T. & S. F. Ry. Co.*, 122 I.C.C. 609, and subsequent reports. The class rates were established in 1956 following our order in *Class Rates, Mountain-Pacific Territory*, 296 I.C.C. 555. There were no movements of livestock or of class-rated traffic over these routes in 1960.

In addition to the foregoing movements, a total of 19 carloads in 1959 and 11 carloads in 1960, of government and commercial traffic were handled over the routes sought between the considered points. The rates charged are not shown, but it is reasonable to assume that they were on a combination basis.

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[5] The complaint was dismissed after the parties advised that they had reached a satisfactory rate adjustment.

The Bieber-route movement.—The complainants use the Bieber route in transporting traffic between points in western transcontinental territory. During the 5 years beginning [fol. 854] with 1955, this route was responsible for approximately 20 percent of the Western Pacific's total freight revenues. This territory produced about 50 percent of the freight cars handled by the Western Pacific and 38 percent of its freight revenues. Excluding the joint movements with the Santa Fe, the Western Pacific's revenue per car in 1959 averaged $169.63 northbound and $171.86 southbound over the Bieber route. It estimates that its revenues per car would average about $144 northbound and $146 southbound if competitive rates were established over the routes sought.

More than 50 percent of the cars moving over the Bieber route are between points on the Great Northern and points on the Santa Fe. For the five-year period above mentioned, the annual average was 30,982 cars over the Bieber route and 7,226 over the Southern Pacific route. In 1959, the traffic moving via the Bieber route in connection with the Santa Fe produced for the Western Pacific revenues per car of $126 northbound and $116 southbound. The Western Pacific estimates that its revenues per car would average about $101 northbound and $93 southbound if competitive rates were established over the routes sought in connection with the Santa Fe.

The traffic and rail service here concerned.—The Pacific Northwest and California have, in the last 20 years, increased their population, consumption, and production at a rapid rate, and continued growth is expected. The complainants urge that rail service in this territory must be expanded to meet this economic growth, and that there is need for the competitive routes through Portland. The Portland Freight Traffic Association, made up of various civic bodies and some 150 large shippers in Oregon and Washington, stress that the routes and rates sought by the complainants would materially assist in the greater industrial development of the Pacific Northwest, provide for a greater

[fol. 855] and more complete competitive rail system, and generally assist in the economic growth of this area.

The Western Pacific has improved its transportation plant to keep pace with the economic growth mentioned, but it is moving only about 75 percent of the volume handled by it in its heaviest war year, 1945, when the line was not as well maintained as it is today. It is ready, willing, and able to meet any demand for service over the route sought through Bieber. Along its line it has some 30 different areas of about 4,500 acres of potential industrial land. It competes for industrial plants with other carriers in California, and in the absence of joint rates and routes to and from points in Oregon, Idaho, and Washington, it maintains it has had difficulty in attracting industries to its lines. Of the 100 industries which located along its lines in the past three years, 85 are served, through switching arrangements or otherwise, by the Southern Pacific, and 70 of these also by additional railroads. Attempts to locate several new industrial plants along its lines were unsuccessful because of a need for service to points in the Northwest on the Union Pacific, the Northern Pacific, or their connections, and joint rates were not available. In the last 30 years the complainants have been unable to obtain traffic from industries served by these defendants. A survey of 142 such industries indicated that more than 25,000 carloads are moving annually which are not available to the complainants because of the lack of competitive rates. About 2,250 carloads originate or terminate on the lines of the complainants and move to or from points at noncompetitive rates.

The Longview Fibre Company has plants at Longview and Seattle, Wash., Oakland, Los Angeles, and other points. From Longview, except for the single-line route of the Union Pacific to Los Angeles, on shipments to California, [fol. 856] it is restricted to routes embracing the Southern Pacific. It urges that the routes sought would make available more empty cars and give rise to faster, more efficient, and more flexible service. However, this shipper may now use five routes to California, consisting of the Union Pacific direct, the Union Pacific to Portland and the Southern

Pacific beyond, the Northern Pacific to Portland and the Southern Pacific beyond, the Great Northern to Portland and the Southern Pacific beyond, and the Great Northern to Bieber and the Western Pacific beyond.

Centennial Mills, Inc., owns and operates flour mills at Spokane and Portland. Its grain is supplied from Washington and Oregon, and moves to Spokane and Portland over the Union Pacific, the Northern Pacific, or the Spokane, Portland, & Seattle Railway Company (SP&S). Only limited quantities originate on the Great Northern in Washington for the reason that few grain elevators are located along that road. This company's flour and millfeed are sold in California at the Portland price, plus a transit balance of 44.5 cents per 100 pounds, based on rates on eastern Washington grain, to northern California, and 52 cents, based on rates on Montana wheat, to southern California. The latter presents no problem to this shipper, since the Montana wheat generally originates on the Great Northern, but at times it secures Great Northern wheat only to find that the transit balance to northern California exceeds 44.5 cents. Also, on shipments to destinations in northern California on the Western Pacific, there is an occasional shortage of Great Northern transit billing from Washington; as a result, this shipper must use the Montana transit billing and absorb the 7.5-cent difference. Centennial desires the routes and rates sought by the complainants, because they would provide greater flexibility to its transit operations and eliminate the 7.5-cent penalty.

The plant of the Pacific Coast Paper Mills, at Bellingham, Wash., is located on the line of the Great Northern, but [fol. 857] it is also served by the Northern Pacific through switching arrangements. It prefers to use the Bieber route to California which it has found to be faster. However, it has used the Southern Pacific route because of car shortages on the Great Northern. It feels the Northern Pacific's participation in joint rates through Bieber would increase the number of available cars and eliminate the penalty when shipping over the Northern Pacific through Bieber. It states also that the routes sought would facilitate delivery.

The Consolidated Dairy Products Company is located at Seattle on the Northern Pacific but is also accessible to the Great Northern through switching arrangements. The switching at Seattle takes 24 hours, but faster service over the Bieber route makes up for this delay. Consolidated believes that the competitive rates and routes through Bieber would eliminate the delay, since the Northern Pacific would move the shipments to Portland; and that they would increase the rail competition between carriers, resulting in better and more flexible rail service. Moreover, the Northern Pacific has provided for storage and repacking-in-transit privileges at Seattle, and Consolidated could ship butter from Ellensburg, Wash., to California points over the routes sought by taking advantage of these transit privileges at the joint rates not now applicable over such routes from and to these points. In 1959 and 1960, this company used the Bieber route for one-third of its shipments to Los Angeles with the balance moving over the Southern Pacific route.

The American Pipe and Construction Company of Portland purchases steel raw materials for fabricating at various points, including Kaiser, Calif., which is served by the Santa Fe and Southern Pacific. Steel purchased at Kaiser and shipped to Portland by the Southern Pacific can be fabricated in transit and then shipped over the Great Northern, the Union Pacific, or the Northern Pacific. The route through Bieber is used in some instances, but then [fol. 858] the steel fabricated at Portland must move to points on the Great Northern. This shipper must keep constant check on the inbound movements to Portland in order to know what steel products can be shipped beyond to points on the Union Pacific or the Northern Pacific. It would be to the advantage of this shipper if it were relieved of the present complexities in transit operations brought about by the failure of these lines to provide competitive routes and rates.

The foregoing is representative of the testimony presented by 15 shippers in the forest products, pulp, grain

products, cottonseed meal, paper, paper articles, food, and iron and steel industries. They support the complainants. "The defendants stress that these shippers have been aware of the lack of joint rates and through routes through Bieber for the last 31 years and have not submitted a written request to the defendants for relief. However, some verbal requests have been made. In the last six years only one shipper requested the Northern Pacific to establish joint rates through Bieber, and that request was handled to the satisfaction of the shipper."

Operating routes north of Portland.—The SP&S, which owns the Oregon Trunk Railway and the Oregon Electric Railway, is owned and under the common management and control of the Northern Pacific and the Great Northern. As material here, it has a water-grade line north of the Columbia River, extending east and west, between Portland and Spokane through Vancouver, Wishram, and Pasco, Wash., with the north-south line of the Oregon Trunk extending between Bend, Oreg., and Wishram, through Oregon Trunk Junction, Oreg. The SP&S is a party to the joint rates with the Southern Pacific, interchanging at Portland, and is used by the Northern Pacific as an alternate route between Portland and points on the Northern Pacific east of the Cascade Mountains, Yakima, Wash., and east, the interchange between the SP&S and the Northern Pacific [fol. 859] being at Pasco or Spokane. This results in more economic and expeditious service than over the longer route of the Northern Pacific through Auburn, Wash., and is requested by some shippers. Unless transit or some other reason requires use of the longer route, traffic brought into Pasco by the Northern Pacific for movement beyond to points in California is turned over to the SP&S.

The Great Northern uses the lines of the Oregon Trunk and SP&S under car-haul contracts, and in transporting over the Bieber route, operates over the lines of these carriers between Bend and its connections with the SP&S at Vancouver, on the west, and Fort Wright Junction (near Spokane), Wash., on the east. Traffic over the routes sought would be handled over the SP&S to Portland.

Under the routes sought, the Northern Pacific would be unable to use the shorter SP&S route between Portland and Pasco. Instead, it would use its more circuitous route through Auburn for movement to points east of the Cascade Mountains. The complainants argue that the defendants could handle the traffic from Portland the same as it is handled over the Southern Pacific route. However, it would not be so routed and would require a backhaul over the SP&S between Wishram and Portland. The route sought over the Northern Pacific from Portland, to Spokane, for example, would require a movement over the SP&S of 106 miles west from Wishram to Portland, and 533 miles over the Northern Pacific through Auburn to Spokane, or 639 miles, whereas from Wishram east over the SP&S to Pasco, thence the Northern Pacific to Spokane, the distance is 271 miles. Thus, the route sought to Spokane on the Northern Pacific is 368 miles longer than over the lines of these carriers east from Wishram to Spokane, and would require crossing the Cascade Mountains at an elevation of 2,837 feet.

[fol. 860] The route of the Union Pacific from Portland sought herein to Spokane, for instance, requires a westward movement from Wishram over the SP&S through Vancouver to Portland, thence the Union Pacific in an eastward direction along the south bank of the Columbia River through Oregon Trunk Junction, which is across the river from Wishram. These westward and eastward movements aggregate slightly more than 200 miles.

From San Francisco to Walla Walla, Wash., on the Northern Pacific, the route sought through Bieber and Portland, thence the Northern Pacific is 1,339 miles, whereas the route of the Southern Pacific to Portland, thence the SP&S to Pasco and the Northern Pacific to Walla Walla is 1,014 miles. The distance using the Southern Pacific to Portland and the Northern Pacific through Auburn and Pasco is 1,170 miles; and through Bieber and Bend, thence the Oregon Trunk, the SP&S to Pasco, and the Northern Pacific to Walla Walla, the haul is 971 miles, or 368 miles shorter than the route sought.

The routes sought to points west of the Cascade Mountains would require a movement from Vancouver to Portland and return to Vancouver, a distance of 20 miles. This distance, although short when compared to the longer distances and out-of-line movements east of the Cascades, represents costly and wasteful transportation to and from Portland, as substantial bridge mileage is involved.

The Portland Transfer.—Cars moving over the routes sought herein (for convenience the northbound movement will be used) from points in California would be interchanged at Portland by the Union Pacific or the Northern Pacific and the Great Northern. The cars would arrive on the tracks of the SP&S; they would be yarded at its Vancouver yard for classification, and those for the Northern Pacific and the Union Pacific would be transferred by the [fol. 861] SP&S service to the Northern Pacific Terminal Company's[6] Lake yard. This yard is 8 miles from the Vancouver yard across the Columbia River and Willamette River Bridges. The cars for the Northern Pacific would be interchanged at the Lake yard, and there is no indication that such interchange would differ from that between the Northern Pacific and the Southern Pacific.

At the Lake yard, the cars are inspected by the Northern Pacific Terminal Company's mechanical forces, and those for the Union Pacific are transported about 2 miles by the terminal Company to its Depot yard, where the cars are given prescribed air tests and then transferred to the Union Pacific. The crews and engines of the latter company move the cars about 2.5 miles over the Steel Bridge[7] spanning the Willamette River to the Union Pacific's Albina yard,

[6] The Northern Pacific Terminal Company is a switching railroad owned jointly by the Union Pacific and the Southern Pacific. However, 25 percent of the Northern Pacific Terminal Company's Lake yard at Portland is owned by the Great Northern and 75 percent by the Northern Pacific.

[7] The Steel Bridge is jointly owned by the Union Pacific and the Southern Pacific. Maintenance and operation of the bridge is supervised by the Union Pacific, but the expense is divided among railroads making use of it on the basis of cars moved over it.

where the trains are made up. Thus, between Vancouver and the Albina yard, a car moves about 12.5 miles, and the elapsed time averages 13 hours and 20 minutes. For this movement the cost to the Union Pacific is $3.69 per car, or $3.25 to the terminal company and 44 cents for handling over the Steel Bridge.

Cars moving from points in California over the Southern Pacific route for interchange with the Union Pacific at Portland are delivered to the Southern Pacific's Brooklyn yard in groups arranged in transit for easy transfer to the Union Pacific's Albina yard. These yards are in Portland, about 4.5 miles from each other. The transfers are made by the Southern Pacific's engines and crews in about [fol. 862] 45 minutes, and the cars are delivered in time for the Union Pacific's outbound movements. In this transfer, the car moves about 4.5 miles, and the elapsed time averages 3 hours and 20 minutes between arrival at the Brooklyn yard and delivery to the Albina yard. The cost to the Union Pacific for this service is 46.88 cents.

Operating routes south of Portland.—In most instances, the Bieber route between points in California considered herein and Portland is longer, has more interchanges, goes through more engine districts, and has higher rises and more curvature than the Southern Pacific route. From Los Angeles to Portland, for example, the Southern Pacific route (direct) is 1,098 miles long, with one interchange; the Bieber route (Santa Fe-Western Pacific-Great Northern) is 1,313 miles long, with three interchanges. The Southern Pacific route encounters 9 engine districts; the Bieber route 12. These respective routes have total curvatures of 47, 613 and 58,722 degrees; respective rises of 12,560 and 14,324 feet; aggregate rises of 27,689 and 32,357 feet; and a maximum rise in 1 mile of 138 and 176 feet. From Stockton to Portland, the same routes are 702 and 788 miles long.

From San Francisco to Portland, different routes are used for carload and less-than-carload traffic. Since joint

class rates, which usually apply on less-than-carload traffic, have been established, the latter routes need not be considered. The Southern Pacific route is 801 miles long with one interchange; the Bieber route, using the Western Pacific, is 880 miles long with two interchanges, but in connection with the Santa Fe, it is 866 miles with three interchanges. The Southern Pacific route encounters 8 engine districts, and both Bieber routes encounter one barge movement and 8 engine districts. The Southern Pacific route, and two Bieber routes have total curvatures, respectively, of [fol. 863] 38,028, 47,094 and 45,933 degrees; respective rises of 8,165, 8,753, and 8,367 feet; aggregate rises of 19,381, 21,121, and 20,539 feet; and a maximum rise in 1 mile of 131, 133, and 133 feet. The above figures indicate the transportation conditions are more favorable over the Southern Pacific route than over the Bieber route between Portland and points in California.

The Southern Pacific, using western-district costs and Rail Form A, developed out-of-pocket costs over the Bieber route which exceed those over the Southern Pacific route to Portland by 25 percent from Los Angeles and 15 percent from San Francisco. According to the Southern Pacific, these cost data do not take into consideration differences in such matters as total degrees of curvature, feet of rise, and total rise, which it is claimed would result in greater differences in favor of its route.

Transit time.—A car moving from Los Angeles to Lewiston, Idaho, over the Southern Pacific to Portland, thence the SP&S to Pasco, and the Northern Pacific beyond, would be in transit approximately from 8 a.m. Monday to 3 a.m. Friday, and over the same route to Walla Walla to 7 a.m. Friday. Using the Northern Pacific through Auburn, the time would be about 24 hours longer, and this would be true over the route sought. The fastest route between these points is through Bieber, thence the Oregon Trunk to Wishram, the SP&S to Pasco, and the Northern Pacific beyond, which under favorable conditions would be 24 hours less than over the fastest Southern Pacific route,

and 48 hours less than the route sought. From Los Angeles to Seattle, the shortest time over the Southern Pacific route in connection with the Union Pacific is 44 hours, which is 26 hours less than over the route sought. From Spokane to Los Angeles using the Union Pacific, the shortest time over the Southern Pacific route would be 55.5 hours, whereas it would require at least 81 hours over the Bieber route.

[fol. 864] *Short hauling the defendants.*—The defendants contend that the establishment of the routes sought would short-haul them in violation of section 15(4) of the act. As shown herein, the SP&S is under the common control and management of the Northern Pacific and Great Northern.[8] The routes which the complainants seek to establish would require the Northern Pacific to exchange traffic with the Great Northern at Portland despite the fact that the SP&S and the Oregon Trunk extend beyond to Bend. The Union Pacific also operates for 246 miles between Portland and Bend, and it connects with the Great Northern at the latter point. If the routes sought were established, it would be required to interchange traffic with the Great Northern at Portland, which would short-haul it by 246 miles on every movement.

Discussion and Conclusions

The complainants rely primarily on the alleged violation of section 3(4) of the act. That section requires equality of treatment between connecting lines, but the equality of treatment is determined by similarity of circumstances and conditions. *Routing, Coal from Origins on Louisville & N. R.*, 313 I.C.C. 752, 758, and proceedings cited therein.[9]

[8] We have held that the SP&S must be regarded, for ratemaking purposes, as a part of the Northern Pacific and the Great Northern systems rather than as an independent line. See *Helix Milling Co., Inc.* v. *Great Northern Ry. Co.*, 287 I.C.C. 77, 78.

[9] Our action was sustained in *Atlantic Coast Line Railroad Co., et al.* v. *United States, et al.*, C.A. 1811, M.D. Ga., April 17, 1962.

The routes sought through Bieber and Portland are longer and involve more difficult operating conditions than the Southern Pacific route, and they require hauls in a general direction opposite to the direct movement.

[fol. 865] Equality is required only between connecting lines. The complainants do not physically connect with the defendants at any point along the Bieber route. The connection is made by the Great Northern at Portland. Insofar as rail carriers are concerned, connecting lines are those carriers having direct physical connections or making up a through route. In *Atlantic Coast Line R. Co.* v. *United States,* 284 U.S. 288, the court found that

> There is no warrant for limiting the meaning of 'connecting lines' to those having a direct physical connection with the Clinchfield. The term is commonly used as referring to all the lines making up a through route.

While the court was construing a lease under section 5(2), the Commission had imposed a condition therein similar to the requirement under section 3(4) that carriers shall not discriminate between connecting lines. This definition of connecting lines was later adopted by the court in *Atchison, T. & S. F. Ry. Co.* v. *City of Chicago,* 240 F (2d) 930, 937, in connection with the application of section 3(4).

According to this view, the complainants would be connecting carriers with the defendants at Portland only if the present routes constitute through routes. The criteria for the determination of whether a through route exists are set out in *Thompson* v. *United States,* 343 U.S. 549, 557, as follows (the quotation is from the Commission's 21st Annual Report to Congress):

> . . . Existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and division of transportation charges, or the use of a proportional rate to or from junction points or basing points. These incidents

permit the filing of a petition (submitted therewith) for further hearing, and replies thereto, filed February 11, 1963; (2) petition, filed March 21, 1963, of complainants for reconsideration of the report and order of Division 2, decided July 26, 1962, and for oral argument, and replies thereto of Union Pacific Railroad Company and Southern Pacific Company, filed April 29, 1963; and (3) petition, filed May 13, 1963, of Northern Pacific Railway Company, et al., for leave to file a reply (submitted therewith) to the said petition for reconsideration:

It is ordered, That complainants' petition for leave to file a petition for further hearing, and the defendants' petition for leave to file a reply to complainants' petition for reconsideration, be, and they are hereby, granted;

And it is further ordered, That the petition for further hearing, and the petition for reconsideration and request for oral argument, be, and they are hereby, denied for the reason that sufficient grounds have not been presented to warrant granting the action sought.

By the Commission.

HAROLD D. MCCOY
Secretary

(Seal)

named are not to be regarded as exclusive of others which may tend to establish a carrier's course of business with respect to through shipments.

In short, the test of the existence of a 'through route' is whether the participating carriers hold themselves out as offering through transportation service. Through carriage implies the existence of a through route whatever the form of the rates charged for the through service.

[fol. 866] In *Beaman Elevator Co.* v. *Chicago & N. W. Ry. Co.*, 155 I.C.C. 313, the Commission held that proof of one shipment on a through bill of lading over a particular route was not sufficient to show the existence of a through route, because, as noted by the court, in the above-cited case, "* * * one shipment was not representative of the carriers' course of business." In *Denver & R. G. W. R. Co.* v. *Union P. R. Co.*, 351 U.S. 321, the Court held that the evidence before us in *Denver & R. G. W. Co.* v. *Union Pac. R. Co.*, 287 I.C.C. 611 did not compel a finding that through routes were in existence. The evidence indicated, as noted on page 618 of our report, that 55 shipments a year had moved on through bills of lading over the routes sought, as compared with thousands from and to the same points at joint rates over existing routes. The conduct of the major defendant had been to preserve its long haul and keep the route sought closed. It had used the route sought only in compliance with instructions from the shippers or the prior carriers. Thus, we concluded that the 55 shipments over the route sought must be regarded as of an isolated nature and insufficient to show the existence of a through route, since any other holding would constitute an open invitation to any shipper to set aside the provisions of section 15(3) and (4) of the act simply by preliminarily making a shipment or two over the route sought to be opened commercially, a result plainly not intended by the Congress.

In *Chicago, M., St. P. & P. R. Co.* v. *Spokane, P. & S. Ry. Co.*, 300 I.C.C. 453, affirmed in *Chicago, M. St. P. &*

P. R. Co. v. *United States*, 366 U. S. 745, the record indicated that 513 shipments had moved at joint rates over the route sought, but thousands had moved over other available routes subject to joint rates. The traffic was not solicited nor did it move at the higher combination rates over the route sought. We concluded that, with the exception of the above-mentioned shipments, the route sought was not [fol. 867] a through route within the meaning of section 15.

In the instant proceeding, 278 carloads of cast iron pipe moved at joint rates from points on the complainants' lines over routes through Bieber and Portland to points on the defendants' lines in 1959 and 1960. During that time, 30 carloads of government and commercial traffic also moved at combination rates over such routes. However, the defendants have not solicited nor encouraged the movement of traffic over the routes sought, but for more than 30 years have tried to keep those routes commercially closed, except where the few joint rates above mentioned were established. While the complainants have solicited traffic for movement over routes through Bieber and Portland to points on the defendants' lines, those actions do not show a holding out on the part of the defendants to offer through transportation. Thus, the few shipments made at combination rates do not prove the existence of effective through routes. It follows that, except where joint rates now exist, no effective through routes exist between points in California on the lines of the complainants and their connections, and points in the Northwest on the lines of the defendants, through Bieber and Portland. There is, therefore, no basis for a finding that the carriers are connecting lines within the meaning of section 3(4). Even if the complainants were connecting carriers, the evidence of record does not establish the similarity of circumstances and conditions which justifies equality of treatment.

While the complainants have indicated a willingness to rely alone on the alleged violation of section 3(4), they also allege other violations and request the prescription of through routes and joint rates over the routes sought. Section 1(4) of the act requires, among other things, that the

railroads establish reasonable through routes with each other, and just and reasonable rates applicable thereto. Where such routes are not established voluntarily, we have the authority under section 15(3) of the act to prescribe [fol. 868] them whenever deemed by us to be necessary or desirable in the public interest. This authority is restricted by section 15(4), which provides that we "shall not * * * require any carrier by railroad * * * to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route * * *".

As above indicated, there are numerous routes between points in the areas here considered over which joint rates apply. The shippers urge that the rates and routes sought would give them more freedom of choice in the movement of their goods, would improve transportation service, time in transit and car supply, and make available additional transit privileges. "Nothing of record, however, indicates that the existing through routes and joint rates are inadequate to meet the needs of the shipping public. In fact the failure of the shipper witnesses to initiate in the last 31 years a determined campaign to persuade the defendants of the necessity of establishing through routes between points on the complainants' lines in California and points on the defendants' lines in the Northwest, is at least some indication of the adequacy of the existing routes. The expression 'in the public interest' means more than a mere desire on the part of shippers for something that would merely be convenient or desirable for them. This desire must be weighed against the effect on other carriers and the general public. On the basis of this record, we cannot find that the public interest would be served by requiring the establishment of joint rates and through routes which are substantially slower and costlier than the present routes."

Additionally, the evidence indicates the routes sought would in many instances short-haul other carriers without

their consent. In the absence of a showing by the com-
plainants that the present routes maintained by the de-
[fol. 869] fendants are unreasonably long or do not provide adequate, efficient, or economical transportation, we are precluded by the provisions in section 15(4) from prescribing through routes.

We find that the failure and refusal of the defendants to establish through routes and joint rates with the complainants through Bieber and Portland, between points in California, on the one hand, and points in Oregon, Washington, and Idaho, on the other, on the same basis as those published in connection with the Southern Pacific through Portland, is not shown to be unjust or unreasonable, nor to result in discrimination against the complainants in violation of section 3(4) of the act; and that the establishment of through routes and joint rates in connection with the complainants, through Bieber and Portland, is not shown to be necessary or desirable in the public interest.

An order will be entered dismissing the complaint.

COMMISSIONER GOFF concurs in the result.

[fol. 870] ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 26th day of July, A. D. 1962.

No. 33679

WESTERN PACIFIC RAILROAD COMPANY et al.,

v.

CAMAS PRAIRIE RAILROAD COMPANY et al.

This proceeding being at issue upon complaint on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and said Division having, on the date

hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission, division 2.

HAROLD D. McCOY,
Secretary.

(Seal)

[fol. 871]

EXHIBIT "B" TO COMPLAINT

[Stamp—Received Jul 31, 1963—Law Department]

ORDER

SERVICE DATE
July 30, 1963

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of July A. D. 1963.

W.G.T.
JUL 31 1963

No. 33679

WESTERN PACIFIC RAILROAD COMPANY et al.

v.

CAMAS PRAIRIE RAILROAD COMPANY et al.

Upon consideration of the record in the above-entitled proceeding, which proceeding has been designated as one involving an issue of general transportation importance, (1) petition, filed January 21, 1963, of complainants for waiver of the Commission's General Rules of Practice to

[fol. 872]

EXHIBIT "C" TO COMPLAINT

[Stamp—Received Aug 11, 1961—Law Department]

W.G.T.
AUG 11 1961

INTERSTATE COMMERCE COMMISSION

Served August 10, 1961

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D.C., and served on all other parties in interest, within 35 days from the date of service shown above, or within such further period as may be authorized for the filing of exceptions. At the expiration of the period for the filing of exceptions, the recommended order will become the order of the Commission and will become effective unless exceptions are filed seasonably or the order is stayed or the effective date thereof is postponed by the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due. If exceptions are filed, replies thereto may be filed within 25 days after the final date for filing exceptions. The stated specific time periods apply to all parties and give full effect to Rule 1.21(c) of the General Rules of Practice to the extent, if any, the provisions of such rule otherwise would be applicable to this proceeding. If the recommended order becomes the order of the Commission a notice to that effect will be served on the parties.

No. 33679

THE WESTERN PACIFIC RAILROAD COMPANY, et al.

v.

CAMAS PRAIRIE RAILROAD COMPANY, et al.

Decided .....

Refusal of certain defendants to enter into joint through rates with complainants between points in California and points Oregon, Washington and Idaho while at the same time entering into such rates with a competitor of the complainants found to constitute an unlawful discrimination. Discrimination ordered removed.

Walter G. Treanor for complainants.

L. W. Hobbs, William P. Higgins and *Frank S. Farrell* for defendants in opposition.

Charles W. Burkett, Jr., for intervener in support of defendants in opposition.

Frederick G. Pfrommer, R. Paul Tjosseni and *A. K. Hinckle* for other defendants.

A. R. Allen for intervener in support of complainants.

[fol. 873] REPORT AND ORDER

RECOMMENDED BY JOHN F. WRIGHT, HEARING EXAMINER

On February 10, 1961, the Western Pacific Railroad Company (Western Pacific) and its wholly owned subsidiaries Sacramento Northern Railway (Sacramento Northern), and Tidewater Southern Railway Company (Tidewater Southern), filed a complaint charging the defendants[1] with

[1] The defendants are Camas Prairie Railroad Company (Camas Prairie), Great Northern Railway Company (Great Northern),

violations of sections 1 and 3 of the Interstate Commerce Act. The violations are alleged to occur as a result of the refusal of the Northern Pacific, The Union Pacific and their short line connections to join the complainants and the Santa Fe and The Great Northern in the publication of through routes and divisions between California points and points in Oregon, Washington and Idaho on the same basis as that granted by the said defendants to the complainants' competitor, the Southern Pacific.

By answers duly filed the Great Northern, the Pacific Coast and the Santa Fe stated that they were all willing to establish voluntarily a general line of competitive joint through freight rates as sought by the complainants. At the hearing the Washington Idaho and Montana made a similar statement on the record and expressed its support of the complainants.

The complainants operate 987 miles of railway lines within the State of California. Some of the major points served by them are San Francisco, Oakland, Alameda, San Jose, Stockton and Sacramento.

The relief sought by the complainants is limited to the area of California, Oregon, Washington and Idaho. Relief is specially sought between points in California and points on the lines of the Union Pacific and Northern Pacific and their short line connections in Oregon, Washington and Idaho. The relief would be applicable to the "Inside Gateway", that is, to traffic moving between points in California via Bieber, Calif., and Portland, Oreg., and thence from or to other points in Oregon, Washington, and Idaho.

The Bieber route, or "Inside Gateway", has been in existence since 1931 and was certificated by the Interstate Commerce Commission in *Great Northern Ry. Co. Construction*,

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Northern Pacific Railway Company (Northern Pacific), Pacific Coast Railroad Company (Pacific Coast), Spokane International Railroad Company (Spokane), Union Pacific Railroad Company (Union Pacific), Walla Walla Valley Railway Company (Walla Walla), Washington, Idaho & Montana Railway Company (Washington Idaho & Montana) and the Atchison Topeka & Santa Fe Railway, (Santa Fe).

166 I.C.C. 3, 170 I.C.C. 399. It is one of two major railroad [fol. 874] routes through Portland that serve California generally and the Pacific Northwest. The route of the "Inside Gateway" consists of the lines of the Santa Fe, Western Pacific, and the Great Northern.

The second major route is made up of the Northern lines and the Southern Pacific. South of Portland this route is either single line via the Southern Pacific or in conjunction with Santa Fe south of Stockton.

There is another route which serves Southern California but not The Central or Northern Areas. This is the Union Pacific from the Pacific Northwest through Salt Lake City, Utah, and thence to Southern California.

Since the construction of the "Inside Gateway" in 1931 the complainants have participated with the Great Northern in a full line of joint rates via Bieber between points in California and Portland, Oreg., and thence to other points on the lines of the Great Northern in Oregon, Washington and Idaho. These rates are competitive since they are generally the same as those published by the Great Northern with the Southern Pacific via Portland, Oreg., and with the joint rates published by the Northern Pacific and Union Pacific via Portland with the Southern Pacific.

The Southern Pacific and the complainants both serve Northern California generally and have many common points.

The Northern Pacific maintains joint rates with the Southern Pacific via Portland between points in California and points in Oregon, Washington and Northern Idaho. It has an interchange at Portland with the Great Northern but refuses to publish rates via Bieber in connection with the complainants.

The Union Pacific has joint rates with the Southern Pacific between points in California and points on its line in Oregon, Washington and Idaho. It declines to participate with the complainants from or to the same points via Portland and Bieber over the present routes in effect between the Great Northern and the complainants although

the Great Northern connects with the Union Pacific at Portland.

The result of this rate situation is that between points in California and points in the Pacific Northwest when either the Southern Pacific, the Union Pacific or the Northern Pacific participate in a routing with the complainants, in most instances, combination rates higher than the joint through rates are applicable. Naturally this precludes shippers from using the "Inside Gateway" from or to such points.

The complainants are even deprived of traffic which they themselves originate. A good example is a shipper at Sacramento located on the Western Pacific. This shipper had [fol. 875] made numerous carload shipments to Pacific Northwest points exclusive to the Northern Pacific and the Union Pacific during 1959. The traffic moved via the Southern Pacific because of the higher combination rates which would be applicable via Bieber.

In 1960 the shipper applied for through competitive rates via Bieber to destinations on the Northern and Pacific and Union Pacific and their short line connections. In its application the shipper stated that the use of the existing route via Southern Pacific to Portland imposed additional transportation charges over and above those that would apply if the rates were established via Bieber. The additional charges were the Western Pacific's charges for the switch from the shipper's plant to the interchange with the Southern Pacific. These were not absorbed because the traffic was non competitive under the terms of the Southern Pacific's tariff.

Early in 1961 the Southern Pacific satisfied the shipper by making an exception to its general practice of absorbing switching charges only on competitive traffic. It amended its tariff to provide for absorption of the switching charge at Sacramento. This reduced the shipper's transportation costs to the through rate level and at the same time effectively prevented the complainant Western Pacific from participating in line haul traffic originated on its own line.

The "Inside Gateway" carries considerable traffic to and from Northern California and beyond. The Santa Fe forms the southern segment of the route. During the five year period 1955 to 1959 the bridge traffic hauled by the Western Pacific ranged from 28,655 to 34,077 carloads. Nevertheless the route is not used to its full capacity. It carried much more traffic during World War II. The complainants' witnesses estimated that because of the lack of joint through rates via Bieber the complainants have been foreclosed from participation in the line haul handling of approximately 25,000 cars per year.

The complainants presented the testimony of 15 shippers. The witnesses represented diverse industries as well as various freight traffic associations. In the main, their testimony was that an additional route would improve railroad service and would avoid any further competitive damage because of the penalties incurred when shipping to points on the complainants' lines. Some of them have found that service via the "Inside Gate", when shipping to and from Great Northern points, to be faster than the Southern Pacific route. They also testified that the additional route would create greater flexibility for transit users.

The defendants interrogated most of these witnesses as to whether or not their testimony had been solicited by the complainants. On brief they endeavored to minimize the testimony of the witnesses because it was solicited. The fact that the testimony was solicited does not of itself affect its weight. The evidence submitted by such witnesses is helpful to the Commission and should be encouraged.

[fol. 876] The defendants argue, and presented evidence to the effect, that the through routes and joint rates sought are neither desirable nor required by the public interest and that they would result in an inefficient and wasteful transportation service contrary to the national transportation policy. They further contend that the establishment of through routes would violate section 15(4) of the act. They also claimed that, with minor exceptions, there are no through routes existing via Bieber between points in California and points on the defendants' lines.

Relying on *Chicago, N., St. T. & P. R. Co.* v. *Spokane, P&S. Ry., Co.*, 300 I.C.C. 453 they say that the existence of joint through rates on only two commodities, that is, pipe and automobiles, does not evidence the existence of through routes on any commodities other than those specifically covered by the published tariff. In addition to those commodities the Commission has heretofore prescribed joint rates via the Bieber route for livestock and class rated traffic.

On brief, the complainants, without waiving their allegations of unjustness and unreasonableness based on section 1(4) of the act, directed their entire argument to the violation of section 3(4), the unlawful discrimination. The mentioned defenses raised by the defendants relate primarily to issues involving sections 15(3) and 15(4) of the act. In the examiner's view of this proceeding problems involving those sections of the act are not reached.

"The defendants in opposition interchange traffic at Portland in the haul of which the complainants participate via Bieber, at competitive joint through rates insofar as cast iron pipe, automobiles, livestock and class rated traffic are concerned. The same facilities used for these interchanges are employed in connection with such higher combination rated traffic that moves via Bieber. There is no difference in the manner of interchange. Nevertheless, the defendants in opposition refuse to participate at competitive rates in an interchange of other traffic at Portland in which the complainants participate via Bieber. At the same time they afford the complainants' competitor, the Southern Pacific, a full line of joint through rates via Portland. There is no justification in this record for such treatment of a connecting line. The granting of a full line of rates to one railroad at an interchange point while at the same time limiting the extent of such rates to the favored line's competitor is the essence of discrimination. It is the type of unlawful discrimination that section 3(4) of the act aims to prevent. It is, of course, a matter for the defendants in opposition, in the discretion of their management, to determine the means of eliminating the unlawful discrimination."

The examiner finds and concludes that the defendants' refusal to interchange traffic at Portland, other than cast [fol. 877] iron pipe, automobiles, livestock and class rated traffic, in the line haul of which the complainants participate via Bieber, at rates competitive with those afforded the Southern Pacific by them is an unlawful discrimination in violation of section 3(4) of the act and should be removed.

Premises considered it is the ORDER of the examiner that the defendants be, and they are hereby, notified and required to cease and desist, within 45 days from the date this recommended order becomes the order of the Commission and becomes effective pursuant to the provisions of section 17(5) of the Interstate Commerce Act, and thereafter to abstain, from practicing the unlawful discrimination found herein.

By the Commission, John F. Wright, Hearing Examiner.

Dated at Washington, D. C., this 31st day of July, A. D., 1961.

HAROLD D. McCOY,
Secretary.

(Seal)

[fol. 878] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
Civil Action No. 41779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant.

ORDER GRANTING MOTION OF NORTHERN PACIFIC RAILWAY COMPANY, CAMAS PRAIRIE RAILROAD COMPANY AND WALLA WALLA VALLEY RAILWAY COMPANY TO INTERVENE AS DEFENDANTS—November 4, 1963

Upon consideration of the motion of the Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company to intervene as defendants in the above-entitled proceeding and it appearing that said companies were parties in interest in the proceeding before the Interstate Commerce Commission and are entitled to intervene as a matter of right pursuant to Title 28, United States Code, Section 2323, and that the motion to intervene conforms in all respects to Rule 24 of the Federal Rules of Civil Procedure:

[fol. 879] It Is Ordered, That said motion to intervene be and the same is hereby granted and that the Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company are hereby made parties defendants in this proceeding and their joint answer to the complaint herein, attached to said motion, is herewith allowed to be filed herein.

Dated this 4 day of November, 1963.

Alfonso J. Zirpoli, United States District Judge.

[fol. 880] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 41779

[Title omitted]

ANSWER OF INTERVENING DEFENDANTS NORTHERN PACIFIC RAILWAY COMPANY, et al.—Filed November 4, 1963

Come now intervening defendants Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company and in answer to the complaint in this proceeding respectfully state:

I.

That the intervening defendant Northern Pacific Railway Company is a corporation organized under the laws of the State of Wisconsin and is engaged in transportation of property and passengers in interstate and foreign commerce as a common carrier by railroad in the states of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon and as such is subject to the Interstate Commerce Act (49 U.S.C.A. sec. 1, et seq.).

[fol. 881] II.

That the intervening defendant Camas Prairie Railroad Company is a corporation organized under the laws of the State of Oregon and is engaged in transportation of property and passengers in interstate and foreign commerce as a common carrier by railroad in the states of Idaho and Washington and as such is subject to the Interstate Commerce Act (49 U.S.C.A. sec. 1 et seq.).

III.

That the intervening defendant Walla Walla Valley Railway Company is a corporation organized under the laws of the State of Oregon and is engaged in transportation of property and passengers in interstate and foreign commerce as a common carrier by railroad in the states of Washington and Oregon and as such is subject to the Interstate Commerce Act (49 U.S.C.A. sec. 1 et seq.).

IV.

That these defendants admit each of the allegations contained in Paragraphs I to V, inclusive, of said complaint.

V.

Answering the first paragraph of Paragraph VI of said complaint, these defendants admit that the plaintiff The Western Pacific Railroad Company operates, inter alia, a line of railroad between Stockton and Bieber, California, and that plaintiffs participate in joint through routes over said line of railroad with the Great Northern Railway Company on the north and The Atchison, Topeka and Santa Fe Railway Company on the south between points in California and points in Oregon, Washington and Idaho; that these defendants do not connect with the plaintiffs and do not maintain through routes or joint through rates with the plaintiffs between said points.

Answering the second paragraph of Paragraph VI of said complaint, these defendants admit that plaintiffs com- [fol. 882] menced a proceeding before the Interstate Commerce Commission which is the subject matter of this suit, charging these defendants and other railroads with a violation of Sections 1(4) and 3(4) of the Interstate Commerce Act (49 U.S.C.A. sections 1(4) and 3(4)) and the National Transportation Policy (49 U.S.C.A. preceding section 1(4)).

Except as otherwise admitted, these defendants deny each and every allegation contained in Paragraph VI of said complaint.

VI.

Answering Paragraph VII of said complaint, these defendants admit the allegations contained therein.

VII.

Answering Paragraph VIII of said complaint, these defendants admit that the Interstate Commerce Commission found that the defendants had not violated Sections 1(4) or 3(4) of the Interstate Commerce Act (49 U.S.C.A. sections 1(4) or 3(4)) or any other provisions thereof and therefore ordered the proceeding dismissed; that except as otherwise admitted, these defendants deny each and every allegation contained in Paragraph VIII of said complaint.

VIII.

Answering Paragraph IX of said complaint, these defendants deny that the Report and Order of Division 2 of the Interstate Commerce Commission decided July 26 and served August 2, 1962, is contrary to or in violation of Section 3(4) or any other provision of the Interstate Commerce Act (49 U.S.C.A. section 3(4)); these defendants further deny that said Report and Order is unlawful in any respect and specifically allege that they have fully complied with all provisions of the Interstate Commerce Act (49 U.S.C.A. section 1 et seq.) and that the plaintiffs were accorded a full and fair hearing and that the order which [fol. 883] resulted therefrom is fully supported by adequate findings and conclusions on all material issues of fact or law, which findings are, in turn, based upon substantial evidence of record and that said Report and Order is lawful and valid in all respects and fully complies with Section 8(b) of the Administrative Procedure Act (5 U.S.C.A. section 1007(b)).

IX.

Answering Paragraph X of said complaint, these defendants deny that the Commission's Order dated July 12 and

served July 30, 1963, is in any respect erroneous, arbitrary or capricious or based upon any errors of fact or law and specifically allege that said Order complies in all respects with Section 8(b) of the Administrative Procedure Act (5 U.S.C.A. section 1007(b)) and affirmatively allege that said Order is lawful and valid in all respects.

Wherefore, having fully answered the allegations of the complaint herein, these defendants pray that all relief sought in said complaint be denied and the complaint dismissed and that these defendants be awarded their costs and disbursements herein.

Dated this 21st day of October, 1963.

Vaughan, Paul & Lyons, Varnum Paul, Earl F. Requa, Frank S. Farrell, By Varnum Paul, Attorneys for Intervenor-Defendants Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company.

[fol. 884] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 41779

[Title omitted]

ORDER GRANTING MOTION OF UNION PACIFIC RAILROAD TO INTERVENE AS DEFENDANT—November 26, 1963

This matter coming on before the Court on Motion of Union Pacific Railroad Company to intervene as defendant, and it appearing to the Court that said movant was a party in interest to the proceeding before the Interstate Commerce Commission involving the subject of the complaint

herein; and it further appearing that under the provisions of 28 USCA § 2323 and Rule 24(a) and (c), it is entitled to intervene as an additional defendant as a matter of right;

Now Therefore It Is Ordered that the Motion of Union [fol. 885] Pacific Railroad Company to intervene as defendant be and it is hereby granted; and

It Is Further Ordered that the answer of this intervening defendant presented herewith may be filed with the Court.

Dated: November 26, 1963.

Alfonso J. Zirpoli, United States District Judge.

[fol. 886] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 41779

[Title omitted]

ANSWER OF INTERVENING DEFENDANT, UNION PACIFIC RAILROAD COMPANY—Filed November 26, 1963

Comes now Union Pacific Railroad Company, intervening defendant, and in answer to the complaint filed herein states:

I.

Union Pacific Railroad Company, a Utah corporation, is a common carrier by railroad and is engaged in the transportation of property and passengers in interstate and intrastate commerce in and through the States of Iowa, Nebraska, Kansas, Missouri, Colorado, Wyoming, Utah, Nevada, California, Idaho, Oregon, Washington and Montana, and is subject to the Interstate Commerce Act (49 U.S.C.A., Section 1, et seq.).

II.

That this defendant admits the allegations in paragraphs I, II, III, IV and V of the complaint.

[fol. 887]

III.

Answering the first paragraph of paragraph VI of said complaint, this defendant admits that the plaintiff The Western Pacific Railroad Company operates a line of railroad between Stockton, California, and Bieber, California, and that the plaintiffs participate in through routes and joint through rates over said line of railroad with the Great Northern Railway Company on the north and The Atchison, Topeka and Santa Fe Railway Company on the south between points in Oregon, Washington and Idaho on the north and points in California on the south; that this defendant does not connect with the plaintiffs and does not maintain through routes and, with a limited exception, does not participate in joint through rates with the plaintiffs between said points.

Answering the second paragraph of paragraph VI of said complaint, this defendant admits that plaintiffs filed a complaint before the Interstate Commerce Commission charging this defendant and others with a violation of Sections 1(4) and 3(4) of the Interstate Commerce Act (49 U.S.C.A. Sections 1(4) and 3(4)) and the National Transportation Policy (49 U.S.C.A. preceding Section 1).

Except as otherwise admitted, this defendant denies each and every allegation contained in paragraph VI of said complaint.

IV.

That this defendant admits the allegations in paragraph VII and alleges further that the Hearing Examiner in his Report and Order served August 10, 1961 (attached to complaint as Exhibit C), did not find the existence of a violation of Section 1(4) of the Interstate Commerce Act as alleged by the plaintiffs in their complaint to the Commission, and further did not recommend that the Commission prescribe the through routes and joint through rates sought by the plaintiffs.

[fol. 888]

V.

Answering paragraph VIII of the complaint, this defendant admits that the Interstate Commerce Commission found that the defendants had not violated Section 1(4) or 3(4) of the Interstate Commerce Act (49 U.S.C.A., Section 1(4) or 3(4)) or any other provisions thereof and therefore ordered the complaint dismissed; that except as otherwise admitted this defendant denies each and every allegation contained in paragraph VIII of said complaint, and respectfully refers the Court to the Report and Order of the Commission (attached to the complaint herein as Exhibit A) for the full and complete findings and conclusions reached therein.

VI.

That this defendant denies the allegations in paragraphs IX and X of the complaint and further denies that the Report and Order of the Commission dated July 26, 1962, and bearing service date of August 2, 1962, and the Order of the Commission of July 12, 1963, bearing service date of July 30, 1963, are arbitrary, capricious, erroneous or unlawful for the reasons alleged in the complaint or for any other reason.

Wherefore, having fully answered the allegations of the complaint herein, this defendant prays that the relief sought by the plaintiffs be denied and the complaint be dismissed with costs to the plaintiffs.

Dated this 31st day of October, 1963.

Respectfully submitted,

F. J. Melia, J. H. Anderson, William P. Higgins, 1416 Dodge Street, Omaha 2, Nebraska;

[fol. 889] Robert N. Lowry, Brobeck, Phleger & Harrison, 111 Sutter Street, San Francisco 4, California,

Attorneys for Union Pacific Railroad Company, Intervening Defendant, By William P. Higgins, Robert N. Lowry.

[fol. 890] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
Civil Action No. 41779

[Title omitted]

ORDER GRANTING MOTION OF INTERSTATE COMMERCE COMMISSION TO INTERVENE AS DEFENDANT—December 16, 1963

Upon consideration of the motion of the Interstate Commerce Commission and it appearing that the movant should be granted the leave therein sought, it is ordered that the Interstate Commerce Commission be, and it is hereby, granted leave to intervene in this cause and to participate in the same manner and with like effect as if named as an original party.

Dated, this the 16 day of December, 1963.

Alfonso J. Zirpoli, United States District Judge.

[fol. 891] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
Civil Action No. 41779

THE WESTERN PACIFIC R. Co., et al., Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant,

and

INTERSTATE COMMERCE COMMISSION,
Intervening Defendant.

ANSWER OF INTERVENING DEFENDANT THE INTERSTATE COMMERCE COMMISSION—Filed December 16, 1963

The intervening defendant, the Interstate Commerce Commission, answers the complaint, as follows:

I.

Admits, for purposes of this action, the allegations in paragraphs numbered I through V, inclusive.

II.

Admits, for purposes of this action, the allegations in the first paragraph numbered VI that the plaintiff, The Western Pacific Railroad Company, operates a line of railroad extending, generally, between Oakland, Cal., via [fol. 892] Stockton, Cal., where it connects with The Atchison, Topeka and Santa Fe Railway Company, and Bieber, Cal., where it connects with the Great Northern Railway Company and no other railroad; that the Great Northern,

the Union Pacific Railroad Company and the Northern Pacific Railway Company serve, among others, numerous points in Oregon, Washington and Idaho, many of them being served by one or more of the railroads; that in California the Western Pacific and Santa Fe are competitive with the Southern Pacific Company for traffic to and from points in Oregon, Washington and Idaho; that the so-called Bieber route, established in 1931, consists of through routes and joint rates maintained by the Santa Fe to Stockton, thence the Western Pacific to Bieber, and the Great Northern beyond; that the so-called Southern Pacific route, which, at places, parallels it, consists of through routes and joint rates maintained by the Southern Pacific to Portland, Oreg., thence the Northern Pacific, Union Pacific or Great Northern, depending upon the carrier serving the northwestern destination; that, with some exceptions, there are no through routes and joint rates over routes consisting of the Western Pacific to Bieber, thence the Great Northern to Portland, and the Northern Pacific or Union Pacific beyond, depending upon the carrier serving the northwestern destination; and that shipments when so routed ordinarily move under combination rates, using the rates from and to Portland; and in all other respects deny the allegations in said paragraph.

[fol. 893]

III.

Admits, for purposes of this action, the allegations in the second paragraph numbered VI that by complaint filed with the Commission on February 10, 1961, the Western Pacific, and its short-line subsidiaries, alleged that the failure and refusal of certain named railroads to establish and maintain, between points in California, served by the Western Pacific or its subsidiaries or in connection with the Santa Fe, and points in Oregon, Washington and Idaho, served by the said railroads, chiefly the Northern Pacific and Union Pacific, joint through rates over routes through Bieber and Portland on the same basis as those maintained by the said railroads in connection with the Southern Pacific

through Portland, violates sections 1(4) and 3(4) of the Interstate Commerce Act, 49 U.S.C. §§ 1(4) and 3(4), and is contrary to the provisions of the National Transportation Policy, 49 U.S.C. preceding §1; and that the Santa Fe, the Great Northern, the Pacific Coast Railroad Company and the Washington, Idaho and Montana Railway Company subsequently indicated their willingness to establish and maintain the routes and rates sought by the Western Pacific; and in all other respects deny the allegations in said paragraph.

IV.

Admits, for purposes of this action, the allegations in paragraph numbered VII.

V.

Admits, for purposes of this action, the allegations in paragraph numbered VIII that the Commission, Division 2, on July 26, 1962, entered the report and order in Docket No. 33679, *Western Pacific R. Co.* v. *Camas Prairie R. Co.*, [fol. 894] attached to the complaint as Exhibit "A", in which, for the reasons given, it found that the failure and refusal of certain named railroads to establish through routes and joint rates with the Western Pacific and its subsidiaries through Bieber and Portland, between points in California, on the one hand, and points in Oregon, Washington and Idaho, on the other, on the same basis as those published in connection with the Southern Pacific through Portland, had not been shown to be unjust and unreasonable or to result in discrimination in violation of section 3(4) of the Interstate Commerce Act and that the establishment of through routes and joint rates in connection with the Western Pacific and its subsidiaries, through Bieber and Portland, had not been shown to be necessary or desirable in the public interest; and in all other respects deny the allegations in said paragraph.

VI.

Denies the allegations in paragraph IX, including subparagraphs (a) through (i), inclusive, and paragraph X, including subparagraphs (a) and (b).

VII.

Except as expressly admitted herein, denies each and every allegation of the complaint.

VIII.

In further answer to the allegations of the complaint, denies that the actions of the Commission were unlawful for the reasons specified in the complaint or for any other reason whatsoever and further aver that the report and orders of the Commission under attack are valid in all respects.

[fol. 895] Wherefore, the intervening defendant, the Interstate Commerce Commission, prays that the relief sought be denied and that the complaint be dismissed.

Robert W. Ginnane, General Counsel, Fritz R. Kahn, Assistant General Counsel, Interstate Commerce Commission, Washington 25, D. C., Attorneys for the Interstate Commerce Commission.

Certificate of Service (omitted in printing).

[fol. 896] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Civil Action No. 41779

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—
Filed December 16, 1963

The United States of America, a defendant in the above action, in answer to the Complaint neither admits nor denies the allegations thereof. The United States of America neither supports nor opposes the order of the Commission.

William H. Orrick, Jr., Assistant Attorney General;

Arthur J. Murphy, Jr., Attorney, Department of Justice, Washington, D. C. 20530;

Cecil F. Poole, United States Attorney, San Francisco, California 94101,

Attorneys for the United States of America.

Certificate of Service (omitted in printing).

[fol. 898] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Civil Action No. 41779

[Title omitted]

ORDER GRANTING MOTION OF SOUTHERN PACIFIC COMPANY TO INTERVENE AS DEFENDANT—December 16, 1963

The motion of Southern Pacific Company, applicant for leave to intervene as a party defendant in the above-entitled action, having come on regularly for hearing, and the Court

having considered said action, and it appearing to the Court that applicant should be permitted to intervene as prayed, and the Court being fully advised in the premises;

It Is Ordered that the above-named applicant for intervention have leave to intervene in this cause, and is hereby made a party defendant to this action, with the right to file pleadings and be otherwise represented herein by counsel in the same manner and with like effect as if named as an original party to this action.

Dated at San Francisco, California, this 16th day of December, 1963.

George B. Harris, United States District Judge.

[fol. 899] Proof of Service by Mail (omitting in printing).

[fol. 900] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Civil Action No. 41779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant,

and

SOUTHERN PACIFIC COMPANY, a corporation,
Intervening Defendant.

ANSWER OF INTERVENING DEFENDANT SOUTHERN PACIFIC COMPANY—Filed December 16, 1963

Comes Now intervening defendant, Southern Pacific Company, and in answer to the complaint filed herein, states and alleges:

I

This intervening defendant, Southern Pacific Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware and is a common carrier of freight and passengers by railroad, engaged in interstate commerce, and as such is subject to the Interstate Commerce Act (49 U.S.C.A. § 1 et seq.).

II

This defendant admits the allegations set forth in paragraphs I, II, III, IV and V of the complaint on file herein.

[fol. 901] III

Answering the first paragraph of paragraph VI of said complaint, this defendant admits that it operates a line of railroad between Los Angeles, California, and Portland, Oregon; that plaintiffs operate a line of railroad between Stockton, California, and Bieber, California; and that plaintiffs' line of railroad connects with The Atchison, Topeka and Santa Fe Railway Company at Stockton, California, and with the Great Northern Railway Company at Bieber, California. Defendant alleges that plaintiffs do not connect with defendants Union Pacific Railroad Company, Northern Pacific Railway Company, Camas Prairie Railroad Company or Walla Walla Valley Railroad Company, and that said defendants do not maintain through routes or participate in joint through rates with plaintiffs between points in California, on the one hand, and points in Oregon, Washington and Idaho, on the other.

Answering the second paragraph of paragraph VI of said complaint, this defendant admits that plaintiffs filed a complaint before the Interstate Commerce Commission charging the aforenamed defendants intervening in the within action, and others, with violations of sections 1(4) and 3(4) of the Interstate Commerce Act (49 U.S.C.A. §§ 1(4) and 3(4)) and the National Transportation Policy (49 U.S.C.A., preceding § 1). This defendant alleges that

it was not named as a defendant in said complaint that was filed before the Interstate Commerce Commission, nor was it charged with the violations specified hereinabove, but that thereafter this defendant intervened in that proceeding in support of defendants Union Pacific Railroad Company and Northern Pacific Railway Company.

Except as otherwise admitted, this defendant denies each and every allegation contained in paragraph VI of said complaint.

IV

Answering paragraph VII of said complaint on file here- [fol. 902] in, this defendant admits the allegations contained therein.

V

Answering paragraph VIII of the complaint, this defendant admits that the Interstate Commerce Commission found that defendants had not violated section 1(4) or 3(4) of the Interstate Commerce Act (49 U.S.C.A. § 1(4) or 3(4)) or any other provisions thereof and therefore ordered the complaint dismissed; that except as otherwise admitted this defendant denies each and every allegation contained in paragraph VIII of said complaint, and respectfully refers the court to the report and order of the Commission (attached to the complaint herein as Exhibit A) for the full and complete findings and conclusions reached therein.

VI

Answering paragraph IX of said complaint, this defendant denies that the report and order of Division 2 of the Interstate Commerce Commission, decided July 26, 1962, and served August 2, 1962, is contrary to or in violation of section 3(4) (49 U.S.C.A. § 3(4)) or any other provision of the Interstate Commerce Act; this defendant further denies that said report and order is unlawful in any respect, and specifically alleges that it and all of the other intervening defendants herein have fully complied with all pro-

visions of the Interstate Commerce Act (49 U.S.C.A. § 1 et seq.) and the National Transportation Policy (49 U.S. C.A. §§ 1, 301, 901 and 1001) set forth therein, and that plaintiffs were accorded a full and fair hearing and that the order which resulted therefrom is fully supported by adequate findings and conclusions on all material issues of fact or law, which findings are, in turn, based upon substantial evidence of record, and that said report and order is lawful and valid in all respects and fully complies with section 8(b) of the Administrative Procedure Act (5 U.S. C.A. § 1007(b)).

[fol. 903]

VII

Answering paragraph X of said complaint, this defendant denies that the Commission's order dated July 12, 1963, and served on July 30, 1963, is in any respect erroneous, arbitrary or capricious or based upon any errors of fact or law, and specifically alleges that said order complies in all respects with section 8(b) of the Administrative Procedure Act (5 U.S.C.A. § 1007(b)); and this defendant further alleges that said order is lawful and valid in all respects.

Wherefore, having fully answered, this defendant prays that all relief sought in said complaint be denied and the complaint dismissed, and that this defendant be awarded its costs and disbursements herein.

Dated: December 16, 1963.

Charles W. Burkett, W. Harney Wilson, By Charles W. Burkett, Attorneys for Intervener-Defendant Southern Pacific Company.

[fol. 904] Proof of Service by Mail (omitted in printing).

[fol. 905] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 41779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant,

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Intervening Defendant.

ORDER ALLOWING INTERVENTION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—January 13, 1964

The Atchison, Topeka and Santa Fe Railway Company, having moved as a matter of right pursuant to the provisions of 28 U.S. Code, Section 2323, for leave to intervene as a defendant in this action and to file its answer to plaintiffs' complaint, a copy of said answer being annexed to the moving papers, and the said motion having come on to be heard before me on the 13th of January, 1964, and the Court having read the Motion to Intervene and support-[fol. 906] ing papers, and counsel for applicant for intervention having appeared in support of the Motion and all parties of record having been served with said Motion, Notice thereof and all supporting papers, and due deliberation having been had therein, now on motion of counsel for applicant for intervention, it is

Ordered that the motion for leave to intervene as a defendant is granted; and it is further

Ordered that the intervening defendant is granted leave to file its answer in the form attached to its motion for leave to intervene.

Dated, San Francisco, California, January 13th, 1964.

Stanley A. Weigel, District Judge.

Certificate of Service (omitted in printing).

[fol. 907] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 41779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant,

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Intervening Defendant.

ANSWER OF INTERVENING DEFENDANT TO COMPLAINT—
Filed January 13, 1964

Comes now the intervening defendant, The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as Santa Fe, and files this answer to the complaint.

I.

Admits the allegations of the complaint.

[fol. 908] II.

Alleges that it was named a defendant in the proceedings before the Interstate Commerce Commission because it

would be a participant in the through routes and joint rates which plaintiffs sought to have prescribed by the Interstate Commerce Commission; specifically admits as alleged in paragraph VI of the complaint that in the proceedings before the Commission Santa Fe agreed to join with plaintiffs and other rail carriers in establishing said joint rates and through routes which plaintiffs sought to have prescribed by the Interstate Commerce Commission; alleges that its position remains unchanged and that, although nominally a defendant, it supports the plaintiffs here.

Wherefore defendant The Atchison, Topeka and Santa Fe Railway Company, prays that the relief sought by plaintiffs be granted.

Frederick G. Pfrommer, Leland E. Butler, 114 Sansome Street, San Francisco 4, California, Attorneys for Intervening Defendant.

[fol. 908a] Certificate of Service (omitted in printing).

[fol. 909]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Before: Hon. Charles M. Merrill, Judge, Hon. William T. Sweigert, Judge, Hon. Alfonso J. Zirpoli, Judge.

No. 41,779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant.

Transcript of Hearing on Motion to Enjoin, Set Aside, Suspend and Annul Order of Interstate Commerce Commission

APPEARANCES:

For the plaintiff: Walter G. Treanor, Esq.

For the United States: Cecil F. Poole, Esq., United States Attorney, By: Charles Elmer Collett, Esq., Robert W. Ginnane, Esq.

For Southern Pacific: W. Harney Wilson, Esq.

For Northern Pacific: Frank S. Farrell, Esq., and Varnum Paul, Esq.

For Union Pacific: Robert N. Lowry, Esq., and William P. Higgins, Esq.

[fol. 910]

ARGUMENT BY MR. TREANOR ON BEHALF OF PLAINTIFF

Mr. Treanor: May it please the Court, the map which has been placed on display before the Court is the map presented by the Northern Pacific, one of the intervening defendants. However, I would like to state that for the most part this map correctly reflects the physical alignment of the railroads involved in this proceeding.

The one exception that I take to the map—and the exception I take is clearly reflected in other maps that are in this proceeding—most importantly Exhibit No. 1 which the plaintiffs introduced before the Commission—and that is that this map does not show in color the important Union Pacific route which extends from this territory through Boise, down through Salt Lake City, and all the way into Los Angeles. That is an extremely important consideration in this proceeding, in our opinion.

[fol. 911] The situation which is presented by this case involves the attempt of the Western Pacific Railroad, the integral middle part of a so-called Bieber Route, to obtain over that route the same level of freight rates as now apply over the Southern Pacific routes—and I say "routes" because the Southern Pacific rates, which are the beneficiary of discriminatory practices, are not limited only to Southern Pacific's single line route, but they also include the joint Southern Pacific-Santa Fe route from Northern California junctions to and from points in Southern California.

Now, when this case was argued before the Interstate Commerce Commission, we originally intended that the discriminatory practices which apply one level of rates in connection with Southern Pacific routes between the Pacific Northwest and California to and from points on the Union Pacific and Northern Pacific were unlawful on several grounds:

First and foremost, they are discriminatory in that they favor one competitive route over another route.

We also originally alleged that those rates which resulted over our route, necessarily made up of high combinations, were unreasonably high and, as unreasonably high, were also a violation of Section 1(4) of the Act.

[fol. 912] Immediately after the oral hearing before the Examiner Western Pacific directed all of its efforts toward the antidiscrimination phase of our case. The Examiner found the presence of discrimination which was prohibited by Section 3(4), and held that it was not necessary to determine whether the rates were also unlawful under other sections of the Act. We have adhered to that position consistently throughout this proceeding, and in this matter before this Honorable Court we have attacked the Commission's order on the basis of the handling of the discrimination phase of the case, and not on the question of whether or not the other provisions of the law were also violated.

We realize that our burden before this Court is not to show that the Commission misevaluated the evidence. We recognize that we must show that they have proceeded on an erroneous statutory interpretation, and that there are not substantial findings in the evidence—rather, not substantial evidence to justify findings which the Commission has made.

First and foremost, the Commission proceeded on the finding that we were not entitled to proceed before them under the provisions of Section 3(4) solely because the route, the Western Pacific portion of the route, extends [fol. 913] from the Bay Area to Bieber. From Bieber north to Portland via either Wishram, Portland or Vancouver the line is served by the Great Northern, and south of the Bay Area it is served by the Santa Fe Railroad. The

Commission held that in the absence of a direct physical connection with the defendants at the common gateway, that we would have to prove that a full level of through routes already existed.

Now, we have challenged that finding as a matter of law, and in researching the problem we found very limited case law on the subject.

From the beginning the plaintiffs have relied upon the decision of the Supreme Court in Chicago, Indianapolis & Louisville v. United States, which is cited at 270 U.S. 287 and is referred to in our brief.

Now, while that case did indeed involve a charge against discrimination in the form of service rather than in the form of a withholding of comparable rates, and even though that case did involve a factual situation where the distance between the complaining line and the discriminating line was no more than the distance of a cross-town switch, we believe that the principles enunciated by the Supreme Court in that case justify the action which we bring here.

The Interstate Commerce Commission and those sup- [fol. 914] porting them have contended that the Supreme Court's later decision in Atlantic Coastline v. The United States, which was decided at 284 U.S. 288, also referred to in the respective briefs, justifies the contention that in the absence of physical connections you must have the existence of through routes.

Now, we have argued at some length on those cases. The plaintiffs take the position that there is nothing in the Atlantic Coastline case which is inconsistent with their position here because the Court in that case was, in the first place, not interpreting any situation under Section 3(4). It was not dealing with discrimination, as a matter of fact, because in reading the case I cannot even find that the Court dealt with the question of discrimination.

The Court found that a particular carrier that was already enjoying through routes was protected by a condition imposed by the Interstate Commerce Commission as a connecting line in approving a lease agreement.

There is one additional point that I would like to mention about those cases at this time which has not been

mentioned heretofore: I think it is significant that both of those cases were decided—the opinion was written by Mr. Justice Brandeis. It is inconceivable, I believe, that had Mr. Justice Brandeis believed that the Atlantic Coast-[fol. 915] line factual situation bore any relationship to the factual situation he had previously determined just seven years prior under the anti-discrimination statute, that he would not have mentioned it. He does recite and call attention in a footnote when he describes connecting lines in that case to a previous decision of his own which was not an anti-discrimination case but was merely a case to determine whether or not a particular transaction was interstate or intrastate in character.

Now, if the same Justice deciding the case did not see any similarity between the two cases, I believe it is a fair assumption, particularly since the facts and circumstances are so different, to say that his pronouncements of the Court's unanimous pronouncement in the Chicago, Indianapolis & Louisville case stands as the law of the land.

Another case referred to, a district court case, which is Atchison, Topeka & Santa Fe v. The City of Chicago, did find in a footnote an adoption of connecting line status in a reference to Section 3(4) as recited in Atlantic Coastline v. United States. However, in that case the issue before the Court was whether the transfer service between passenger terminals in Chicago was subject to the jurisdiction [fol. 916] of the City of Chicago or the Interstate Commerce Commission.

The Court found that the carriers performing this passenger service were obligated as connecting lines to perform this cross-town transfer service, and therefore clearly the Interstate Commerce Commission had jurisdiction.

I respectfully submit that had the question been presented to the court: could one of the connecting railroads which was on the other side of town refused to enter into a joint route with one of the westward or eastward lines while it entered into another, and the issue therefore presented a question of entitlement to bring an action to attack discrimination, that the court would have found little difficulty in applying the doctrine of the Supreme Court which we find in Chicago, Indianapolis & Louisville.

Judge Merrill: Is it your thought that once the carrier has joined in a through route arrangement and joint rate arrangement along one route, that it must thereafter, in order to avoid a charge of discrimination, enter into through routes with all other connecting carriers?

Mr. Treanor: No, sir. I will answer it in this way: First of all, as to the question of entitlement to sue, it might follow that once they have established the through [fol. 917] routes that they can't discriminate against other lines.

However,—and this would follow, no matter how far removed they are, but there is always, as the Commission itself has stressed so strongly in this case, the question not only of entitlement to sue but the test of similarity of circumstances and conditions. So while a carrier somewhat removed, which is already a part of a through route, might —it might be argued that they could bring an action under Section 3(4). They still would have to prove that the circumstances and conditions which apply over their route are such and compare so favorable to the preferred or the beneficiary of the discrimination—the discriminatory practices routes.

Now, in that regard I have noticed with naturally much interest the argument of the Interstate Commerce Commission that we would open the floodgate to actions under Section 3(4). I might say that I don't think that would be such a bad idea if discrimination is being practiced. If this is the only way that you can attack discrimination, this might not be such a bad idea. However, I would like to point out that under their theory, Your Honors, no matter how far removed the carrier is from the point of discrimination, if they in the goodness of their heart, the [fol. 918] discriminating carriers, have seen fit to publish through routes, then that carrier can come in and attack the discrimination. But the man they flatly close the door to, he can't come in at all. So their argument is what opens the door to a Section 3(4) complaint, not ours, because Your Honors, ours is confined to this situation:

We have the Bieber Route, and in evaluating the right of the Bieber Route to proceed to attack discrimination

which is foreclosing it from a tremendous territory, I think we have to look first at: Why was the Bieber Route created, and why was it created as an end-to-end connection of separate carriers rather than permitting one line, say the Great Northern, to build all the way to Southern California to provide competition to Southern Pacific? But the Interstate Commerce Commission very wisely determined—and I think the carriers that were parties to the application wisely determined—that under the mandate of the national transportation policy it was silly to build duplicate physical parallelling facilities all the way the length of the Northwest down to Southern California when one connection, the construction between Klamath Falls and Bieber, would permit all of the benefits of competition to flow without dissipating the carrier's facilities and their resources.

So when the Commission established the Bieber Route, [fol. 919] it gave it a purpose. It said, "Go forth and do unto the Southern Pacific some competition."

Now, the only way that we can do that is if we can seek protection from the discriminatory practices of those lines which shut us off from performing that competition.

Mr. Higgins of the Union Pacific described the routes. He described them essentially correctly. And he showed, and he admits, and no one can deny that there is vigorous competition between the Southern Pacific routes and the Bieber Route. And anything which strangles the competitive efforts between those two carriers should be prohibited under Section 3(4).

We are not saying that under Section 3(4) our connections to the southwest would necessarily be entitled to attack this particular act of discrimination. What we are saying is that the Bieber Route was established as a competing line of railroad, and it was so constructed and has been so operated as a single line of railroad.

The evidence in this case showed the close working of the partners of this route for over 30 years. Therefore, the evil which is being committed here should be attacked, should be subject to attack by the victim.

Now, much has been made of the fact by my opponents [fol. 920] that neither the Santa Fe, our partner to the south, nor the Great Northern, our partner to the north,

has come in here. Nor did they come in before the Commission and introduce evidence. They did. They did confess judgment. They did agree that they would put in the rates we sought, and they did agree that they would pay the division to the northern lines which we thought were equitable, which is the same as what the Southern Pacific is getting.

But the Northern Pacific, and the Union Pacific, and the Southern Pacific overlooked one very important fact. It is only the Western Pacific that can afford the honest, true, full-blooded competition to the Southern Pacific, and only the Western Pacific is shut off because the Southern Pacific joins the Great Northern on the same level of rates as apply over the Bieber Route. So the Great Northern shippers have a choice. This is true. They can ship either by Southern Pacific or the Bieber Route on an equal rate basis.

Union Pacific and Northern Pacific shippers can—they also have a choice. They can either ship Southern Pacific all the way or they can ship Southern Pacific, thence Santa Fe. So Santa Fe and the Great Northern do not have the door of competition closed in their face. And this is why the Western Pacific alone is challenging this prac-
[fol. 921] tice.

Now, in view of the Commission's contention that plaintiffs are attempting to indirectly accomplish via a discrimination complaint what should otherwise be accomplished by other means, perhaps, as they suggest, under Section 1(4), I think an observation of Mr. Justice Brandeis in the Chicago, Indianapolis & Louisville case is most pertinent. With your indulgence I would cite it because we have not previously cited it. Quoting:

> "The steam railroads"—which were the defendants in that case—"contend that, in effect, the order directs them to establish through routes and joints rates, or to allow a common use of terminals; that such extensions of service can legally be made only upon a finding that public necessity and convenience require them, and that without making such a finding the Commission

has, under the guise of a discrimination order, compelled them to extend their service."

The Court disposed of that argument, commenting:

"The order does not require the steam railroads to extend any service to the south shore. It leaves them free to remove the discrimination by any appropriate action."

[fol. 922] End quote.

I might observe that the Examiner in the Interstate Commerce Commission proceedings herein made the same observation as to the allegations which had been raised before him.

Now, the second question, if we are connecting lines, is whether the plaintiffs were entitled to relief because over their route similar transportation circumstances and conditions prevailed. The Commission has asserted in its brief that no matter how bad this decision may be, nor how inconsistent with its actions in other cases, the decision cannot be set aside if there is substantial evidence to support it. We don't challenge that. But there cannot be substantial evidence to support an order where, on the face of the report which we attack, most of the pertinent evidence was not misweighed; it was plain mislaid. It simply was ignored.

Now, unless the Commission considered the evidence in its entirety, it cannot hold that it has reached a conclusion upon substantial evidence. The Commission even at this late stage admits its unawareness of the major evidentiary issues which were urged upon it throughout this proceeding. We have pleaded with them to renew the major controverted issues and they even now say they were not introduced before them.

[fol. 923] The Examiner's factual determinations were apparently rejected, but without any findings of fact which would indicate just where he went afoul even though he heard all of the evidence.

This is not a situation where the facts are not in general undispute—in dispute. The issue is not the evaluation, the weighing of the evidence. This is a situation where the facts are in serious dispute, not as to what they say but as to their very existence. The Commission cannot choose isolated, strongly-contested, bare segments of the record and justify them as substantial evidence.

Now, the test of similar circumstances and conditions have been attacked by the plaintiff on two basic grounds: First, the conclusion which the Commission reached is directly contrary to the record as a whole. Secondly, initial comparative operating difficulty, which has been completely solved, and which in their solving place no burden upon the lines committing the discrimination, may not be used as they were here to justify discrimination. The test must be based upon performance. Yet the Commission ignored all of the evidence of performance and considered only the contention of the Southern Pacific witness, a person who could hardly be expected to be objective in the circum- [fol. 924] stances, that the Bieber Route should not be—should not be as good as all the evidence of performance showed that it was.

Significantly, the Commission even overlooked the fact that in entering its unsupportable supposition, the Southern Pacific had to resort to the tactics of avoiding any so-called comparison which involved any of its routes except those most choicely located for such a showing. And this point was asserted to the Commission continually throughout the proceedings and was ignored.

If it is not already clear from the pleadings, let me please make it clear that plaintiffs are not contending that the Commission should close its eyes to comparative transportation conditions over both routes south of Portland. To the contrary, we are asking them to open their eyes to the evidence which was submitted before them. An appraisal of the whole record shows, in brief, that the Bieber Route is economical, it is efficient and it is profitable, and it proves that not on the basis of a short-range study but in the over 30 years of its existence. It is fully competitive

and is, in fact, a preferred route wherever discriminatory rates are eliminated. And Exhibit 11 in this proceeding, which is ignored by the Commission, shows that where [fol. 925] there is a choice, and the choice exists from points in the Northwest to points on the Santa Fe over Great Northern, Union Pacific or Northern Pacific, for the five full years for which statistics were available prior to this oral hearing before the Commission, over 80 percent of the traffic that had a choice moved over the Bieber Route.

Now, recognizing that perhaps solicitation efforts were stronger in favor of the Bieber Route, recognizing the fact that from territory east of the Cascades the Bieber Route is shorter than the Southern Pacific Route, recognizing all of those factors, a performance of 80 percent over a five-year period where the shipper under the statute has a right to select, if he doesn't like what the carrier did, to select his own routing is certainly an endorsement of the Bieber Route's ability to compete where the prices are equalized.

The Western Pacific is suffering serious, inexcusable damage as the result of the present discrimination. That is what the record shows.

Now, in addition to improperly denying our right to seek relief, and in failing to enter proper findings based upon substantial evidence, the Commission in this case acted in a most arbitrary and capricious manner in its somewhat [fol. 926] cavalier rejection of the testimony of the shipper witnesses in this case. It refused to consider the shipper witness in its true context, namely, what can the Bieber Route do, what does it do, what are the effects, would the shippers use the Bieber Route if it weren't for the rate discrimination problem. All of that was ignored by the Commission. And it rejected this witness, or this testimony, on the grounds that those witnesses who got on the stand and swore as to their need for these rates had not in the past requested Northern Pacific and Union Pacific to voluntarily publish them. The Commission thereby ignored the testimony of those witnesses that the reason that they didn't do it was simply that they had been led to believe that it was an absolutely useless gesture.

After this decision of the Commission came out, if the Commission felt there was any significance to this alleged failure, which had been explained, the Commission before the administrative proceedings were closed certainly should have afforded the opportunity for further hearing so that they could have learned two very important facts; so that they could have learned that once the shipping public knew that the Commission thought this silence was insignificant, they responded in overwhelming numbers.

[fol. 927] Now, we offered to prove this to the Commission before they closed the proceedings, and we also offered to prove that the offer to publish the rate was a sham. And if the opportunity is ever given by the Commission to hear what really happened, we are prepared to show that not a single request was granted.

So therefore, Your Honors, we do contend that substantial justice has not been done here, not because the evidence has been improperly weighed, but because it has not been taken into the Commission's consideration.

I am going to request, with your permission, that I reserve the rest of my time for reply. But I do want to observe that the Chicago, Indianapolis & Louisville case, which answers so many questions here, and should have answered so many questions for the Interstate Commerce Commission, was asserted to them from the opening pleading or brief.

Judge Zirpoli: May I ask a question here? You said that the matter of shipping mainly via Salt Lake City was an important consideration. Why is that so?

Mr. Treanor: Thank you, Your Honor.

The non-discriminatory rates which we are seeking apply via this tremendously-circuitous route by Union Pacific via Salt Lake into Los Angeles.

Judge Zirpoli: Are they getting the same rates that [fol. 928] apply to the shorter route?

Mr. Treanor: Yes, Your Honor. Yes, sir, the same rates apply by the combination Union Pacific, Southern Pacific via Portland, the Union Pacific-Southern Pacific-Santa Fe via Portland, and the Union Pacific all the way.

Judge Zirpoli: Do I understand that if the Great Northern is used from Wishram, the Southern Pacific get the same rate that the combination through Western gets to, let's say, Sacramento?

Mr. Treanor: Yes, Your Honor. From Great Northern points the rates are equalized, from Great Northern points, regardless of which route is used south of Portland or Wishram.

Judge Zirpoli: One of your arguments here is that minimum findings sufficient to meet the requirements of administrative procedure have not been made. Assuming that is true, what do you deem the action of this court should be? Send it back for what purpose?

Mr. Treanor: Ideally, Your Honor, I would hope this Court would find that on the basis of this record the Interstate Commerce Commission cannot find other than that Western Pacific is entitled to bring the action and is entitled to the relief—idealistically.

If the Court does not grant us that relief, it is our prayer [fol. 929] that the Court will send it back to the Commission with instructions to both grant further hearing for the purpose of considering the shipper requests for the rates which have been turned down, and to open the record on the present record as it applies to all other phases of the case, and to enter findings on the record as a whole, because I believe that if the record as a whole is evaluated, the Commission cannot find against us without indicating a clear and arbitrary attitude.

Judge Merrill: Going back to this contention that you are, by proceeding under Section 3(4), securing relief which it is contemplated will be granted under 1(4), I must confess I am still a little troubled by that.

It is my understanding that public need is the prime consideration in the granting of through routes, the prescribing of joint rate arrangements under 1(4). Absent public need, a carrier would have no right to insist upon being included in a through route or insist on joint rates being made for his benefit under 1(4).

But still, as I understand your position, absent public need, if it can be said that the granting of a through route

to one railroad and denying it to another is discriminatory, then this same relief which has been granted under 1(4) can also be secured under 3(4) on the basis of discrimina-
[fol. 930] tion.

Now, is it the same relief you are securing here? And if not, why is it in proceeding to equalize rates, in proceeding, in effect, to secure for yourselves the benefit of joint rates and the benefit of through routes—why is it that you are not securing 3(4) the very relief which 1(4) is designed to give only under circumstances of public need?

Mr. Treanor: The basic difference, Your Honor, is this: Section 3(4) relief is limited to a specific number of circumstances. There has to be discrimination between connecting lines. This does not have to appear in any way under Section 1(4). As a matter of fact, Your Honor, Section 15(4) of the Act which limits the right of the Commission to proscribe through routes, it specifically said that that prohibition, the limitation upon the Commission's right, do not apply under Section 3 where there are Section 3 situations. The statute clearly distinguishes that.

And I think, in view of Your Honor's question, I would like to make very clear why I proceeded originally under both sections of the Act: It is clear that in eliminating discrimination, in causing an end to discrimination, the law leaves it to the offending carrier, when he has been
[fol. 931] found guilty, to eliminate the discrimination by any one of a number of ways. Now, in this particular case, if we had proceeded only under Section 3(4) originally, the Union Pacific and Northern Pacific could have eliminated the discrimination in any one of three ways: they could have discontinued the low level of rates with the Southern Pacific and published with them on the same level that they published with us. That would have eliminated the discrimination. They could give us the same level of rates that now exists over the Southern Pacific. Or they could meet somewhere in the middle. They could raise theirs and lower ours.

Now, it became clear to us that, we believe, the present level of rates which applies over the Southern Pacific is as high as it should legitimately be, and over our Bieber Route

to Great Northern points the rates are the same as the preferred rates to Northern Pacific and Union Pacific points over the Southern Pacific route. So, therefore, we wanted to make it clear at that time that we felt that the highest level of rates which should result from the elimination of the discrimination were those that were already in effect, and if by alleging violation under Section 1(4) we have set any higher level than those which now apply over the Southern Pacific, we would be unreasonably high

Judge Zirpoli: Did you make that argument initially [fol. 932] before the Hearing Examiner?

Mr. Treanor: No, sir. I might say there was no question about it, sir. At any stage of the proceeding there was no— But I will say that subsequent to the Hearing Examiner, and I believe in my petition for reconsideration to Division 2, I told Division 2 that we recognized that the Interstate Commerce Commission could eliminate this discrimination in any one of several ways, but that we felt that the overwhelming evidence of the reasonableness of the present level made it unrealistic for any relief to come except to reduce ours to the same level as the Southern Pacific.

Judge Merrill: Well, isn't this true, that if you prevail, isn't this true, that you would then have a through route, you would then, in effect, have joint rates?

Mr. Treanor: Yes.

Judge Merrill: Then the situation is simply this, as I understand it: If there is a public need for an additional through route, 1(4) is appropriate. If, on the other hand, there is no public need for it, and the only basis for granting it would be on the theory that failure to grant it would be discriminatory because we already have one and another route is unable to compete effectively without also having [fol. 933] the same treatment, then, discrimination being present, the same end can be accomplished under 3(4) without the need for establishing a public need.

Mr. Treanor: Your Honor, if that were true, Congress never would have had to enact Section 3(4) because all of these situations could be attacked through Section 1(4). But Congress clearly contemplated that there would be an

entirely different standard, an entirely different question which would arise.

One of the differences, Your Honor, was the question of short hauling. If you go to a common point of interchange where discrimination occurs, under Section 3 it doesn't make any difference that the offending carrier could carry your traffic to some other point, which would give him a longer haul, and Congress has said that. So therefore it is not intended that Section 1(4) and 3(4) would both reach the same evil.

Now, I do agree without any question, although there is some suggestion in the opposing party's brief, that public interest is of vital consideration in a Section 3 case. It's not just a question of: Is Western Pacific being hurt? The public interest is an overriding interest in a discrimination case.

Judge Merrill: Suppose the fact is that there is no public need for a through route or for a joint rate arrange-[fol. 934] ment, which would go hand in hand. This is a fact. Now, notwithstanding that, it might be that the Commission would feel it would be disadvantageous to the public to have another through route created. But notwithstanding that, I would judge, if discrimination exists with a connecting carrier, that carrier can secure a through route or joint rates in order to be able to eliminate the discrimination.

Mr. Treanor: It can obtain that relief if the offending carrier sees fit to equalize the situation between both carriers in that manner, yes, Your Honor. And it is obvious, I think, that Congress intended that the Commission's concern over whether or not there should be an additional route or not, the Commission's concern was of little moment if discrimination was being practiced because Congress has set up a separate statute and a separate set of rules to eliminate discrimination.

Judge Merrill: Well, let me ask you this. This is what has been puzzling me about it. I probably have a bad habit of trying to simplify situations.

But here we have on the one hand Southern Pacific which does have the benefit of a through route and joint rate arrangement, and on the other hand we have the

Bieber Route which does not have those advantages, and there results a discrepancy in the rates which is prejudicial [fol. 935] to Bieber. Now, if that discrepancy in rates is simply explainable by virtue of the proposition that Southern Pacific enjoys the benefit of a through route and joint rate arrangement, which you concede results in a fair rate, then doesn't the prejudice go out the window? This rate discrepancy is understandable, it is explainable simply on the basis that one route is a through route with the advantages which normally and naturally flow from that fact, and the other one is not and cannot become one because there is no public need for one.

Doesn't this eliminate all question of discrimination?

Mr. Treanor: No, Your Honor, it does not. The answer to the question, first, there is only one reason—only one reason why the through route does not exist between the Bieber Route and the Northern Pacific and Union Pacific points, and that is the arbitrary refusal of those lines to treat us the same as they treat our competition.

Judge Merrill: But it's not arbitrary, is it, if it has been determined by the Commission, as I understand it has been here, that there is no public need for it? If there is no public need for it, is there an obligation on the part of [fol. 936] the offending carriers to treat you in a similar fashion?

Mr. Treanor: Section 3(4) would indicate there is.

Judge Merrill: Well, Section 3(4) says that every character that complains he is prejudiced or discriminated against by the fact that one route, the through route, can impose a through route irrespective of the public need or, perhaps, the public injury that might result from it, wouldn't that be true?

Mr. Treanor: No, Your Honor, because the safeguards built in against that situation which you have just mentioned is the very sound test of similarity of circumstances and conditions which must prevail over the discriminated route and the preferred route. That prevents the situation that you have indicated concern about.

Judge Merrill: Well, suppose it is not in the public interest to have two through routes competing with each other.

Mr. Treanor: I will confess, Your Honor, if it is not in the public interest for the West Coast of California, Oregon and Washington to have the benefit of at least two competing routes, then we have no hope of relief.

Judge Merrill: Well, suppose north of Portland that is the situation, that if there were two routes competing up [fol. 937] there, that they might destroy each other and it might be that the truck lines would take over, and this is felt by the Commission not to be in the public interest. I don't know what all considerations go into it. But it does seem to me that the Commission constantly is making determinations that free competition is not in the public interest, or free competition does not require a determination that that the granting of a through route is in the public interest. Isn't it done quite frequently?

Mr. Treanor: I know of no case, in all sincerity, in the Commission's history where they have come up with a decision on facts like this and to have held as they did here. I don't believe that this decision is consistent with a single past action of the Commission, and I honestly believe, Your Honor, that it is not consistent with what they have done since.

I honestly believe that the presiding commissioner in this case decided that we were not a connecting line and everything else became immaterial to him. I sincerely believe that. And I think that is the only way you can justify the treatment of the record.

And I do submit that if we are a connecting line, then there is no way he could have held except to hold that we are entitled to the protection of that act under the test [fol. 938] of similarity of circumstances and conditions.

Thank you, Your Honor.

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ARGUMENT BY MR. GINNANE ON BEHALF OF INTERSTATE COMMERCE COMMISSION

Mr. Ginnane: May it please the Court, my name is Robert Ginnane. I am general counsel for the Interstate Commerce Commission for whom I am appearing.

Your Honors, Mr. Collett has asked me to correct the statement that he made to you when he presented me to the Court. He said that I was representing the United States Department of Justice. I am not representing the Department of Justice because it has taken a neutral position in the case.

Judge Merrill: I was wondering what its position was in this court. As I understand it, before the Commission it has aligned itself with Western Pacific; is that correct?

Mr. Ginnane: I believe it sought to.

[fol. 939] Mr. Wilson: It sought to by way of intervention, Your Honor, at a very late stage.

Judge Zirpoli: It filed a brief in support of its position, didn't it?

Mr. Wilson: It filed pleadings and papers with the Commission in an attempt to intervene in Western Pacific's support right at the very end of the case.

Mr. Ginnane: Before the Commission, the Western Pacific contended that refusal of Northern Pacific and Union Pacific to enter into joint rates with it on the same basis as it dealt with Southern Pacific ratewise violated the command of Section 1, paragraph 4, of the Interstate Commerce Act that every railroad establish reasonable through routes with other such carriers, and just and reasonable rates. Now, that claim invoked the Commission's powers under Section 15, paragraphs 3 and 4, which originated in the 1906 amendments to the Hepburn Act, to establish through routes and prescribe joint rates over such routes when required by the public interest.

Also, Western Pacific contended that the failure and refusal of Western Pacific and Northern Pacific to establish such rates with it violated Section 3(4), which provides that railroads shall not discriminate in their rates, facts and charges between connecting lines.

[fol. 940] It doesn't say "Route," may it please the Court; it says "between connecting lines."

In this court Western Pacific has wholly abandoned its contention that the course of action of Northern Pacific and Union Pacific violated Section 1(4); and that means,

despite the confusion which persists in Western Pacific's pleadings, working in the "sugar" testimony, that this case as before this Court does not involve shipper interests, it involves only competitive struggle between carriers.

Judge Zirpoli: May I ask a question? Assuming we were to conclude that the Bieber Route constituted a connecting line route, what would you say? If we were to conclude that.

Mr. Ginnane: If you were to conclude two things, that Western Pacific is a connecting line with U.P. and Northern Pacific, and if you found also that the circumstances and conditions of the two routes are comparable, then Western Pacific is entitled to the relief which it seeks.

Judge Zirpoli: All right. Is it true that Section 3(4) is designed to preserve competition?

Mr. Ginnane: It was intended to protect connecting lines from rate discrimination.

Judge Zirpoli: Well, for what purpose? To preserve [fol. 941] competition?

Mr. Ginnane: To preserve competition to a limited extent. To limit to some extent the carriers—

Judge Zirpoli: Pardon me. Isn't the real purpose to preserve competition? Isn't that the basic purpose of it?

Mr. Ginnane: Only as between connecting lines.

Judge Zirpoli: Let's assume that. Isn't that the real purpose of it? The real purpose of Section 3(4) is to preserve competition?

Mr. Ginnane: To a limited extent.

Judge Zirpoli: Well, that is what I don't understand, this "to a limited extent."

Mr. Ginnane: Because it applies only to the rate treatment of connecting lines. A railroad is forbidden to discriminate in terms of rates between connecting lines where the circumstances and conditions are substantially the same on the two connecting lines.

Judge Sweigert: But if they are not physically connected lines, or have not previously established through routes and rates, then there is no bar against any discriminating practice?

Mr. Ginnane: There is no bar. And there is some history to this, a rather bitter history for the Interstate Commerce Commission.

[fol. 942] Let me take as a starting point the proposition that not everything a railroad does is subject to federal regulation at the suit of a competitor. Specifically, in the analogous area of—in the same area of routes and rates the whole legislative and judicial history of the route and rate provision of Section 15(3) and 15(4) reflects a purpose to allow railroads considerable competitive freedom in dealing with their competitors. Repeatedly Congress and the Supreme Court in carrying out the congressional purpose have restricted ICC's power to require railroads to enter into through routes and joint rates with each other. The Commission, to use a colloquial phrase, has been slapped down again and again in its ideas as to whether and under what conditions through routes and joint rates might be in the general public welfare.

I would suppose as of 25 years ago, before the Commission had these legislative and judicial reverses, it might well have been most sympathetic to Western Pacific's request for the same rate treatment as the Southern Pacific gets over the Portland routes. But that is the real history of this thing. Every time the Commission has taken a broad, philosophical approach to the establishment of through routes and joint rates, its wings have been cut.

[fol. 943] Judge Sweigert: Would that policy still apply where the very purpose of the establishment of this Bieber connection was to provide some competition against the Southern Pacific in this area of traffic? That was the purpose of the original construction of the connection, wasn't it?

Mr. Ginnane: I am sure that is what the constructors had in mind and what the Commission had in mind in approving the route, but there was not the slightest implication in the original construction in '31 that that meant that without regard to the specific provisions of the Act that route composed of the Great Northern and Western Pacific would

have to have exactly the same rate treatment which exists over the Portland route of the Southern Pacific Company.

Judge Sweigert: Then that means that the refusal of the Northern Pacific and Union Pacific to give the same consideration to Western Pacific as they did to Southern Pacific would frustrate the purpose of this thing, wouldn't it? How can the routes compete if these carriers up north can make arrangements with Southern Pacific—(inaudible to the reporter).

Mr. Ginnane: They compete as to points served by Great Northern where joint rates apply on the same level as via Southern Pacific from Portland. The routes are [fol. 944] competitive as to many points served by Great Northern. It can't compete as to points served only by Union Pacific or Northern Pacific.

Now, the only relevant statutory provision—and we are all agreed on this—is Section 3(4) which prohibits railroads from discriminating in their rates, fares and charges between connecting lines.

Judge Merrill: As I understand it, then, the Commission concedes that if we have a situation in which a connecting line is involved, and if we have a situation in which rationally we can't say that there is a lack of similarity in circumstances, that a through route and joint rates can be secured—must be imposed in the absence of voluntary agreement to it, irrespective of the public need.

Mr. Ginnane: That is correct. All the parties are agreed that Western Pacific has the burden of establishing two things, and only two things—

Judge Zirpoli: May I ask a question? To what degree does similarity of circumstances and conditions indicate whether or not there is competition? Isn't that a factor that determines whether or not there is competition, and a very important factor?

Mr. Ginnane: I am not sure I understand the question, sir.

[fol. 945] Judge Zirpoli: Well, what determines competition? Wouldn't the similarity in conditions be a factor in determining whether two lines are truly competitive? If

there was such tremendous dissimilarity in circumstances and conditions, they can't be said to be competitive.

Mr. Ginnane: That's right, in a sufficiently extreme situation. On the other hand, there are substantial differences, such as there is. The theory is that it wants some difference in rate treatment.

Judge Zirpoli: If they are truly competitive, shouldn't the degree of similarity which would affect it be one that should be of some true significance and importance?

Mr. Ginnane: We will demonstrate that, Your Honor, this morning.

Judge Zirpoli: Very well.

Judge Sweigert: Pardon me. As I understand it, the Commission has found that there is dissimilarity in conditions here?

Mr. Ginnane: Yes.

Judge Sweigert: Is that right?

Mr. Ginnane: We are all agreed here.

Judge Sweigert: They are not the same?

Mr. Ginnane: They resolved two things against Western Pacific, two things that Western Pacific had to establish. [fol. 946] It held that Western Pacific was not a connecting line with Union Pacific and Northern Pacific; and secondly, it held that even if it was a connecting line the circumstances and conditions surrounding the two routes were not sufficiently comparable.

Judge Sweigert: Then wouldn't that be inconsistent with the very purpose of the inauguration of this route, which was to establish competition of some kind with the Southern Pacific Company?

Mr. Ginnane: And it has indeed provided competition on all points in the Northwest served by Great Northern.

Judge Sweigert: It wouldn't provide competition unless there was some similarity in conditions of traffic, which is what the Commission has not found?

Mr. Ginnane: Nothing in the Commission's reports authorizing the construction of this line suggests that for one moment the Commission was intending to prescribe complete equality of rate treatment over these two routes.

Judge Merrill: But that wouldn't be within the Commission's prerogative to determine if the lines in fact connected and if the lines were in fact operating under similarity of circumstances. The Commission could not deny equality of rate treatment. It seems to me that that is [fol. 947] sort of bootstrapping yourself a little bit to say that the Commission must have had in mind inequality of rate treatment at the time that it established the Bieber Route, or that there is a lack of similarity of circumstances.

Mr. Ginnane: The Commission could only have intended that whatever rate structure was finally established for the Bieber Route would be in accordance with the general provisions of the Act governing rate structures generally. And this problem of open and closed routes is not peculiar to this particular geographic problem. It goes on all over the United States.

Judge Merrill: I think what my brothers up here are troubled by is that the Commission in determining a lack of similarity of circumstances seems to have dealt overwhelmingly with the situation south of Portland rather than the situation north of Portland to which the Western Pacific would like to get access, and that as far as the situation south of Portland is concerned, the route was created for the purpose of competing with the Southern Pacific. It seems to be doing so vigorously, and how can it consistently be said under these circumstances that dissimilarity of circumstances south of Portland is a valid consideration in denying access to the Northwest? They are competing vigorously?

[fol. 948] Mr. Ginnane: They are competing.

Judge Merrill: They are created for the purpose of doing so. Now they are denied the opportunity of competing to the north because the circumstances somehow are dissimilar, even though any such dissimilarity is being overcome in a very competitive fashion.

Mr. Ginnane: To the points served by the Great Northern. The problems of connection and interchange are different at Portland. On the division of argument which we had undertaken—

Judge Zirpoli: How are the conditions different at Portland?

Mr. Ginnane: Could I leave that for counsel for the Northern Pacific, because in our division of argument in which we sought to minimize duplication, I undertook to concentrate primarily on the Commission's findings that Western Pacific is not a connecting line.

Judge Merrill: I am afraid we are interrupting your flow of argument. Go ahead, counsel.

Mr. Ginnane: I am just concerned that counsel not engage in duplication or repetition.

The Commission held, we think correctly, that connecting lines are those carriers having direct physical connection or making up a through route.

Judge Merrill: Now, on that I hope you will be able [fol. 949] to enlighten me. There seems to me to be a little contradiction in terms, to say that in order to be a connecting carrier the through route must not only connect but must go through, must go beyond the connection. It is my understanding that on the Bieber Route we do have a through route as far as Portland. Am I correct in that? We do have joint rate arrangements between Great Northern—

Mr. Ginnane: (Interposing.) With the Great Northern.

Judge Merrill: So that as far as Portland we do have a through route?

Mr. Ginnane: And beyond Portland to all points served by Great Northern.

Judge Merrill: Yes. Well, then why is it necessary in order to be a connecting line at Portland that the connecting line be able to show that it has through routes beyond and through Portland over the very carriers about whose discrimination it is complaining?

Mr. Ginnane: Well, for example, Great Northern might have agreed to participate in through routes with Western Pacific only as far as Portland and for some arbitrary reason might have said, "We won't establish through routes at any other point." Through routes primarily are established by agreement of the carriers.

[fol. 950] Judge Merrill: But I don't see how that ties into our concept of a connecting carrier. It seems to me that by insisting on the existence of through routes beyond and over the carriers that are being complained of, you are departing from what I would consider to be the ordinary conduct of a connecting carrier.

Mr. Ginnane: If Union Pacific, for example, had a physical connection with—if Western Pacific, rather, had a physical connection—

Judge Zirpoli: Why is this so important? Traffic moves. The pattern of traffic is there. Why is a physical connection so important?

Mr. Ginnane: Because it is in the alternative, the Commission held. To be a connecting line one of two facts must exist, a direct physical connection—which is a typical concept of a connecting line. Or even in the absence of a physical connection, as here, a carrier is entitled to be treated as a connecting carrier, connecting line, if it participates in through-route movements with other carriers. It's one or the other. It doesn't have to be both.

Judge Merrill: Where do we find any requirement that this through route must be any more than a through route that brings the carrier to the point of connection?

Mr. Ginnane: As a matter of fact, just looking at 3(4) [fol. 951] alone as original matter, I think one's natural ruling would be that it requires a physical connection, and the Commission has sort of expanded that with judicial approval through the years to say that, "Well, if you don't have a direct through route, you can still be a connecting line if you are a participant in through movement."

Judge Merrill: It seems to me that is just exactly what we have here. We have a connection by Western Pacific, who you might say is an agent of the Great Northern. Now, the Great Northern—if the Great Northern were attacking the rate here instead of the Western Pacific, if it were representing the Bieber partners, we wouldn't have any problem of connecting line at all. Why, then, should the situation be any different?

Mr. Ginnane: But they are not. Admittedly there is no physical connection between Western Pacific and these two lines. So what do we get? The basic contention of Western

Pacific that this route is operated as a single unit, as an entity, and that a route as an entity is entitled to protection under 3(4).

Judge Zirpoli: Isn't it accomplishing all the objectives that would be accomplished by a single line? It seems to me everything is being accomplished. The purpose of transportation is being served, and it seems to be in iden-
[fol. 952] tical fashion.

Mr. Ginnane: That is true in the Rio Grande, the Union Pacific dispute which went to the Supreme Court. Ample physical connection, and every purpose could have been served as far as physical transportation goes. The Supreme Court recognized Union Pacific's long-established policy of holding the traffic in the Northwest for itself and not allowing it to be routed via Rio Grande except for prohibitive higher combination rates.

Now, it isn't—that route isn't operated as a unit. It isn't operated as an entity in any sense recognized in transportation routes. Western Pacific and Great Northern are separate carriers. Each of them determines rates separately. No one of them can put in a rate alone. Each can act in establishing a through rate only with the concurrence of the other. Which is a situation which every independent railroad in the United States finds itself in. There are thousands of these through routes, but they are not regarded as entities for rate purposes. Each carrier is an independent participant whose concurrence is required before any through transportation and through rate can be established.

Judge Sweigert: Well, how about this? The discrimination provision, if we have the Western Pacific and Great
[fol. 953] Northern having a through rate arrangement up at Portland—and I understand that to be the fact, isn't it?

Mr. Ginnane: Union Pacific and—

Judge Sweigert: Western Pacific and Great Northern.

Mr. Ginnane: Yes. And beyond Portland to other points served by Great Northern.

Judge Sweigert: All right, at least to Portland. Now, having established a through rate arrangement, couldn't the Great Northern-Western Pacific arrangement be considered to connect at Portland or beyond with Union Pacific and Northern Pacific for the purposes of—at least of ascertaining whether or not any discriminatory practices were being followed by Northern Pacific and Union Pacific.

Mr. Ginnane: We submit no, sir, Your Honor. We admit that Western Pacific is a connecting line with either Northern Pacific or Union Pacific at Portland because it has a physical connection. No question about it. But Western Pacific does not have a physical connection, admittedly, and it does not participate in through routes with Union Pacific and Great Northern.

Judge Merrill: In other words, unless there is a physical connection, the Union Pacific must more or less hold out [fol. 954] its hand by virtue of granting a through route or Western Pacific cannot be said to connect with Union Pacific. There must be a holding out by Union Pacific in order to accomplish a connection.

Mr. Ginnane: Yes.

Judge Merrill: In the absence of a physical connection.

Mr. Ginnane: In the absence of a physical connection, yes. And that is exactly what is involved in the establishment of through routes, a holding out of the hand.

Judge Sweigert: Pardon me, is it correct to say that if Great Northern were complaining of discrimination by Northern Pacific and Union Pacific under that section, that they would have a right to be heard?

Mr. Ginnane: That's right. They are a connecting line by reason of direct physical connection.

Judge Sweigert: Well, what is the position of Great Northern?

Mr. Ginnane: They filed a pleading stating that they had no objection to the relief sought being given.

Judge Sweigert: But they are not asking for it?

Mr. Ginnane: They are not asking for it, they are not participants in the litigation. Santa Fe took the same position.

[fol. 955] Judge Zirpoli: Is it your contention that the Atlantic Coastline case and the—(inaudible)—case laid down a flat rule that in the absence of physical connection there must be a through route?

Mr. Ginnane: Yes.

Judge Zirpoli: Your contention is that that flat rule was laid down by those cases?

Mr. Ginnane: That is the way the Commissioner has consistently interpreted it. It has to be one of two things: direct physical connection, which is, of course, the typical connection, or participation in a through route.

Judge Sweigert: Well, if the Commissioner has extended it by interpretation to include through route arrangements as equivalent of physical connection, isn't it possible for them to extend it a little bit more by interpretation to mean a situation like this?

Mr. Ginnane: Well, there are limits to what it can do by way of interpretation, as it has been assured by the courts time and time again in exactly this type of situation.

Now, what is a through route? The Supreme Court said in the Rio Grande case:

> "The test of existence of a through route is for the participating carriers to hold themselves out as [fol. 956] offering through transportation service. Findings of through route can therefore be made on the basis of express agreements between carriers, or on the basis of inferences drawn from continuous practices sufficient to show that through route exists even though not provided for in formal contracts or tariffs."

Judge Zirpoli: Specifically, why was this through route provision granted to certain specific commodities? Why did that come about? How did it come about?

Mr. Ginnane: In this case?

Judge Zirpoli: Yes.

Mr. Ginnane: Joint rates exist over the Bieber Route at the point served by Union Pacific and Northern Pacific on cast iron pipe.

Judge Zirpoli: Yes.

Mr. Ginnane: They also exist on automobiles, but the automobile movement is non-existent because the projected plant was never built.

Judge Zirpoli: How did it come about on the iron pipe? How did that come about?

Mr. Ginnane: Because the shipper asked the carrier for such rates and made a showing of need for the rate. We had the same thing in the—

[fol. 957] Judge Zirpoli: (Interposing.) Well, what I am driving at is, were all of these exemptions voluntary acts or were they the consequence of complaints filed or some other action of that character?

Mr. Ginnane: Joint rates on cast iron pipe were voluntarily granted. Joint rates on livestock were granted by the Commission, but no livestock moved. The joint rates on automobiles was voluntarily granted but, as I say, that became hypothetical because the plant was never built.

Judge Zirpoli: When they were granted by the Commission on livestock, was that with opposition?

Mr. Ginnane: That was with opposition.

Judge Zirpoli: Well, what is the logic supporting granting it with opposition for livestock and doesn't support granting it to the others—to any other commodity?

Mr. Ginnane: Because the Commissioner was able to make the finding required by Section 15 for the imposition of through routes.

Judge Zirpoli: So that was a different approach from the 3(4) approach?

Mr. Ginnane: And the law was settled in the Rio Grande case by the Supreme Court where a carrier, for one reason or another, participates in joint rates on one or two [fol. 958] commodities, but that does not amount and need not be held as constituting a holding out to perform through transportation service on all commodities.

Again, on the record here there is a showing that 30 carloads of miscellaneous freight moved at the higher combination rates over the Bieber Route at two points served by Northern Pacific, but they were probably shipper mistakes in routing them where the higher rates would apply.

But more important, the Supreme Court also held in the Rio Grande case, and also held on the same sort of facts in the Milwaukee case, that a mere trickle of shipments is not enough to establish the existence of through transportation.

Judge Sweigert: Well, it included livestock and cast iron pipe. Would that be a small percentage or a trickle as compared to the entire traffic?

Mr. Ginnane: No livestock actually moves. About 200 carloads of pipe move a year, and about 20 or 25 miscellaneous carloads, government and commercial traffic. A mere drop in the bucket compared to the commercial traffic available. And that was exactly the situation that was before the Supreme Court both in the Rio Grande and the Milwaukee cases. The shipment actually moving in through transportation service was so small as to be regarded as [fol. 959] not representative—not a representative holding out to perform through transportation service. And we submit it is exactly the same factual situation here.

Basically, I think the whole case now boils down to the contention, is a route with perhaps two or three carriers embraced in it—is that route entitled to the protection of a connecting line under 3(4)? 3(4) doesn't use the word "route." It talks about connecting carriers.

And look at the consequences here. Here the carrier, Great Northern, that does connect at Portland. Now you are going to ask to hold that the next carrier, Western Pacific, that it can assert that it is a connecting line. And then where do you stop? The next carrier is the Santa Fe.

Now, you apply that around the United States generally, we would get expansion of the concept of connecting lines such as no one has ever contemplated. Indeed, this is the first case in which such a concept of connecting line has even been urged.

And I think it is significant that we are now told by Western Pacific that it was the route competing with Southern Pacific that was to be protected from the outset. It has taken them about 25 years to discover this route [fol. 960] entity concept as included in the protection of connecting lines under Section 3(4).

Thank you.

ARGUMENT BY MR. HIGGINS ON BEHALF OF THE UNION PACIFIC, INTERVENING DEFENDANT

Mr. Higgins: May it please the Court, my name is William Higgins. I am appearing for the Union Pacific, the intervening defendant in this proceeding.

I am going to discuss the test of similarity of circumstances and conditions, and a good deal of what I have to say will be equally applicable to Union Pacific and the Northern Pacific as well.

The plaintiff, Western Pacific, concedes there must be similarity of circumstances and conditions between the contrasting roads before there may be a finding of discrimination under Section 3(4). They dispute the principle resorted to and relied upon by the Commission and also dispute the application of the facts to that principle. I will endeavor to show that the principle relied upon by the Commission is based in logic and supported by precedent, and the findings are amply supported by the evidence of record.

Section 3 of the Act, which relates to discrimination between rates, in the context of this case means that Western Pacific is alleging that the Union Pacific and Northern Pacific are discriminating in that they participate in joint rates between the Northwestern states and California in [fol. 961] connection with the Southern Pacific at Portland, while not so participating in the same rates at the same level with the Great Northern at Portland for movement over the Bieber Route.

Now, within the circumstances of this case, that means that a multitude of rates in the Northwestern area and California in the reverse direction, applicable on numerous commodities, are involved. It is incumbent upon the Commission, then, to compare circumstances and conditions over the allegedly preferred and allegedly prejudiced route. The present run on the Northern Pacific and the Union Pacific in the Northwest run from the various points here to Portland and then south to California destinations and origins. The allegedly prejudiced route, the route that the plaintiff Western Pacific would like to see opened, and the route on which they contend joint rates equivalent to the Southern Pacific rates should be in effect, would be from the same Northern Pacific-Union Pacific points to

Portland, then over the Bieber run, through Bend, Bieber, to California points.

The Commission accordingly, because over-all single component rates are involved, which involves the carriers in the over-all transportation, the Commission must then compare the over-all circumstances and conditions over the [fol. 962] two allegedly preferred and allegedly prejudiced routes. And that is just what the Commission did in regard to that matter. They did compare one route versus the other. The component north of Portland, the Portland interchange, the No. 1 route over the other, the circumstances and conditions, in fact, of the two routes.

They also compared the over-all circumstances such as comparative distances from the same point in California to the same point in the Northwest, again one route versus the other. They compared also over-all transit lines, one route versus the other.

Now, to avoid any confusion respecting the respective routes, I would like to mention that the route of the Union Pacific from certain parts of the Northwest area, generally east of the Cascades, to a rather limited area in the Los Angeles area, that there are joint rates in effect over that route which are the equivalents as to both points and as to a limited number of commodities as like rates over the Southern Pacific route from Portland.

Judge Zirpoli: When you say "limited," doesn't it apply to all commodities?

Mr. Higgins: No, sir, it does not.

Furthermore, the Western Pacific does not allege that [fol. 963] this route is prejudiced at all. It is not complaining of that route or complaining of the rates for that route, and that is irrelevant to the issues before the Commission.

I think we would take the position that the Union Pacific as to points at which it provided service from this area through this area here (indicating on map) is entitled to compete with the other route, and nobody has objected to that.

There is one other circumstance, one other route that should be mentioned and that is from all points served by the Great Northern in the Northwest, the full line of joint

rates is the same as in effect over the Southern Pacific route, are in effect to destinations of the Western Pacific and the Santa Fe in California as an existing route. Now, when Mr. Treanor refers to performance, and when he says that the Bieber Route is the equal of the Southern Pacific's Portland route, he is talking about that route. He is talking about present movement on the Great Northern over the Bieber Route. The shippers who testified in the case for the Western Pacific were using that route. That meant the shipments from points such as Seattle would go through Vancouver, on down across the Columbia River, down here. From points in this area shipments [fol. 964] would go here—not to Portland but via Great Northern right on down.

Now, that route isn't in issue. That is present. That is being used. It's not an allegedly preferred route, it is not an allegedly prejudiced route. The shippers who testified in this case in no case have ever used the proposed supposedly prejudiced Bieber Route. They have never done it. They have never shipped from a point in this area east of the Cascades to Portland over the Great Northern and then over the—I beg your pardon, they have never shipped from points east of the Cascades via Northern Pacific or the Union Pacific, then to Portland and then back over the Great Northern. All the evidence in this case relating to route comparisons have demonstrated that the Bieber Route, if it were to be participated in by the Northern Pacific and the Union Pacific, would be decidedly inferior from all ordinarily accepted operating characteristics to the present Southern Pacific-Portland-Union Pacific-Northern Pacific route, which is allegedly the preferred route.

Judge Merrill: Would you concede a similarity of circumstances between the Great Northern route to Wishram and south and the Great Northern-Southern Pacific connection at Portland and south?

Mr. Higgins: I don't know, sir. There was no attempt to compare the two. It has no relevance. The Great [fol. 965] Northern did not introduce any evidence as to the characteristics of their route to the north.

Now, I would like to emphasize that the Commission did not consider only the circumstances and conditions south of Portland—the Bieber Route vis-a-vis the Southern

Pacific route up to Portland. They went beyond that and considered the over-all conditions over the two routes.

Now, just as the plaintiff in this case has been hesitant to come to grips with the test of connecting line status, so have they been uncertain as to the actual test of similarity of circumstances and conditions. I think you have to establish a principle first and see if the Commission has applied or misapplied the facts to the principle.

Before the Commission the Western Pacific has contended that the test must be confined to the transportation conditions over the route of the defendants—that is, the conditions north of Portland—and in the opening briefs of this court it stated that the only lawful test is whether there are more costly or more difficult transportation conditions imposed upon those allegedly discriminating, that is, Union Pacific and Northern Pacific north of Portland.

Now, in the complaint to this Court the Western Pacific [fol. 966] said that the error of the Commission was that in applying the test of physical operating conditions it limited itself to the route south of Portland. But the Commission did not do that.

In their reply brief there seems to be a certain change in the test that the Western Pacific feels is applicable in that they said that the Commission should review the evidence as it applies to the routes as a whole, in their entirety, and not fragmented north and south, which we contend the Commissioners do.

Now Western Pacific asserts that the error of the Commission was in requiring that the inherent physical characteristics of the two routes must be identical. I submit that the Commission's report contains no such language and no such finding. The Commission in its report said that, "Equality of treatment is determined by similarity of circumstances and conditions."

They referred then to the Routing, Coal case, 313 I.C.C. 752. In that case there was a comparison of over-all circumstances and conditions over the entire routes. In the district court proceeding, 205 Fed Supp 360, the contention was made that the Commission should have looked only at the portion of the transportation provided by the

allegedly discriminated carrier. In this case that would [fol. 967] be only the service performed by Northern Pacific and Union Pacific north of Portland.

The Court and the Commission both rejected that argument and said there must be an evaluation of over-all circumstances and conditions to determine if there is sufficient similarity to require equal rate treatment. That was affirmed by the Supreme Court, 371 U.S. 6.

Now, the Commission, after asserting the principle of the Routing Coal case, went on to make this finding:

> "The route sought through Bieber and Portland is longer and involves more difficult operating conditions that the Southern Pacific route, and they require hauls in a general direction opposite to the direct movement."

Now, that implies an evaluation of more than just the route south of Portland because the haul in the opposite direction is north of the Columbia River, back and forth.

Judge Zirpoli: When you consider the similarity and dissimilarity, do you consider them as they relate to the effect on transportation or do you consider them because of physical differences? Isn't it the ultimate effect on transportation which determines whether it is similar or dissimilar?

Mr. Higgins: I would say it is a dual test, a test of [fol. 968] operating characteristics and also the test of the effect upon the allegedly discriminating carrier.

Judge Zirpoli: Would the time consumed in shipping be a major consideration?

Mr. Higgins: It would be a very, very significant factor. It might explain the reason why carriers such as Union Pacific or Northern Pacific decline to participate in joint rates on this route. I don't know.

Judge Zirpoli: When you look at it from the shipper's point of view in which time might not be an important factor, where you look at the shipper's point of view where the only important factor to him may be cost—or do you just look at it from the point of view of the railroads?

Mr. Higgins: We look at it from the point of view of the railroad and the shipper. The railroads are not in a position of encouraging circuitous, round-about, slow and costly routes if that is not going to provide a good service to the shipping public. This is a competitive situation between the Northwest and California, not only between railroads but between other forms of transportation as well, and if a railroad in one case were to offer service over a route that just does not make sense from an operating or competitive standpoint, that railroad will be hurt the next [fol. 969] time it solicits a shipper against a truck operation. That is one of the reasons why Union Pacific has declined to participate in what it considers to be an inefficient, slow and circuitous route.

Judge Merrill: Well, this is what troubles me about this: We are talking about similarity of circumstances which might be relevant in a consideration of a granting of a through route through public necessity or anything of that sort. The similarity of circumstances that we are concerned with here would be those that would disqualify someone from claiming to have been discriminated against, and in this case by virtue of the rates charged.

Now, what possible relevancy is there to the round-about route south of Portland that would justify discrimination as to rates charged north of Portland?

Mr. Higgins: Your Honor, there is no rate charged north of Portland. If we had segmented rates, rates which broke on Portland, one north and one south, perhaps there would be a relevance in examining only the portion relating to that rate either north or south, but these are over-all single factors, one component rate.

Judge Zirpoli: Would a division of rates then be of some significance for that purpose?

Mr. Higgins: Not to this extent, sir, no. That question was reserved later. The charges that accrue under the rate, [fol. 970] of course, are divided between the carriers upon a basis which was in the formula which in a number of circumstances included circuity and number of miles of routes, and so forth.

But I would like to point out briefly that the test of similarity of circumstances and conditions was, as used by the Commission in this case, adopted previously. The Supreme Court has affirmed the use of that principle and that test. The Western Pacific contends that the facts are different. Of course they are. Elements present in one instance are not present in the other. I think it is fair to say that in this case there were more and different dissimilar circumstances than there were that the Commission considered in the Routing Coal case.

Judge Zirpoli: Well, there is some dissimilarity in every competing line, isn't there, in every competing line situation?

Mr. Higgins: Yes, sir, there would be. No two routes are identical. The Commission did not observe that test. They did not require identical physical characteristics.

Judge Zirpoli: What I am trying to get at, what is the ultimate basic objective which determines whether or not similarity of circumstances exists or does not exist? Is it [fol. 971] the ultimate transportation benefits that a shipper gets between Sacramento and Seattle, or what is it?

Mr. Higgins: It rests in the ultimate discretion of the Commission as to whether the conditions and circumstances are so dissimilar that the carrier that is allegedly discriminating has a good reason for doing it.

I would like to point out, first of all, that this is a complaint case. The Western Pacific came in this case attempting to upset and attacking a long-established rate structure. They had the burden of proving similarity. They admit that that is the test and they had the burden of proving it. However, there was no evidence introduced by the Western Pacific that compared one route versus the other. In fact, the Western Pacific witness who testified on the operating circumstances acknowledged that there was circuity and back-hauls and less favorable interchange at Portland.

The only over-all evidence introduced by the Western Pacific was the miles between northwest points and California points, and in every case the mileage was considerably longer over the supposedly prejudiced route than it is over the present Southern Pacific route.

I would like to point out, if I may, to the Court why the Union Pacific considered the circumstances so different

[fol. 972] that it is justified in declining to participate in joint rates with the Bieber Route and the Great Northern. For more than 50 years the Union Pacific had participated with rates and routes with the Southern Pacific from points such as Spokane to the east and Seattle to the west. There was a direct movement from Portland by the Union Pacific, and at that point there was a short interchange at Portland, four and one-half miles to the Southern Pacific. Shipments were then moved over the Southern Pacific route to and from points in California. The Southern Pacific did not compete in the Northwest with the Union Pacific, and whenever a shipment was originated by the Union Pacific at one of these points and delivered to the Southern Pacific, that is as far as it would go. It received the full haul.

On the other hand, if joint rates were put into effect at Union Pacific points in the Northwest to Portland over the Bieber route, this would be the result: A typical shipment would move over the same trackage to a point in Portland as it did in the first instance. But at Portland, instead of being interchanged for the short four-and-one-half mile distance, it would have to be interchanged to the Great Northern at Vancouver, Washington, across the Willamette River, across the Columbia River, some twelve and one-half [fol. 973] miles. At that point the Great Northern would move the shipment back east along the north bank of the Columbia River. The Union Pacific shipment moves this way, west on the south bank, and then south to the California destination.

Now, it is apparent, first of all, in every case from points east of the Cascades there is, in fact, a reverse movement. The result of this, and the evidence also indicated numerous other characteristics where the supposedly prejudiced —(unintelligible)—the result is there's a slower time and a longer distance between comparable points. For example, from Los Angeles to Seattle the mileage over the present Southern Pacific route is 1,275 miles to the Union Pacific points in Seattle. If the Bieber Route were used, the mileage over the Bieber Route to Portland and then Union Pacific would be 1,493 miles. The scheduled transit time over the present Southern Pacific route is 44 hours. If

the same service were provided over the Bieber route, the scheduled transit time would be 70 hours.

Another circumstance, the Great Northern competes with the Union Pacific at all points in the Northwest. And the Union Pacific also has a trackage which goes along the Columbia River at this point, and then south to Bend, Oregon. Every shipment received and originated by the Union Pacific at one of these points is delivered to the [fol. 974] Northern—that is, the Great Northern points, would be moved along a track parallel to the Union Pacific, and for a distance of 246 miles, which is the distance of the Union Pacific, that they themselves could serve.

Judge Zirpoli: Why is it the only interchange is at Portland? Why is there an interchange there?

Mr. Higgins: Because that is the place where the complainant, Western Pacific, alleges discrimination results. We have had no request from Great Northern, or, apparently, to participate in rates at Bend or Wishram. Perhaps they don't want it. They haven't appeared and haven't complained, Your Honor.

I submit, then, that the circumstances and conditions are so dissimilar over the two routes—and the Commission found this and decided to fix rates, comparing one route as against the other, reached the final conclusion that the Western Pacific did not prove the similarity required, and beyond that found a dissimilarity in all respects—operational, competitive—and the final result was they found that they are so strongly dissimilar that the different rate structure was justified, one route versus the other.

Thank you.

Argument by Mr. Farrell on Behalf of Northern Pacific, et al.

Mr. Farrell: May it please the Court, my name is Frank [fol. 975] Farrell. I represent the Northern Pacific, the Camas Prairie and Walla Walla Railroads.

I understand the Court is concerned about competition. Well, they should be. At the time the Interstate Commerce Commission authorized the construction of the Western Pacific North Bieber to meet the needs of the Great Northern, and for the Great Northern construction to their junction 490 miles from the point of interchange, which

the plaintiff Western Pacific seeks in this proceeding, the parties represented to the Commission—and that went on into the field of the federal court and ultimately was heard—if this construction was authorized, they would establish joint through routes and rates between points in the states of Oregon, Washington and Idaho to points in California. They fulfilled that obligation, and they have worked as a team in the movement of freight between these points.

My company, the Northern Pacific, also maintains rates, but the rates we maintain are local rates from Portland to points within the state, with certain exceptions which the Court has referred to, namely, on livestock, on pipe, on automobiles, and what are called class rates which are not here involved.

The circumstances of those, in 1951, the United States Pipe Company, which established a plant at Tecopa, [fol. 976] California, that if it had shipments going to points on the Northern Pacific in these northern states, it would therefore like joint through rates. A complaint was filed with the Interstate Commerce Commission. Before the matter came on for hearing we had agreed to and we did publish those joint through rates. Cars have continued to move on those rates, and still do.

In 1959 an automobile manufacturer said it was going to establish an automobile assembly plant in Northern California. Again a complaint was filed. We did establish those rates. The plant was not built and no movement has ever occurred on it.

But here there is no question: Through routes, which is what the Western Pacific seeks in this proceeding, do not exist. The Western Pacific has conceded it before the Commission, and they concede it in the brief before this Court at page 8, and they said that under the rule of the Thompson case, 343 U.S., through routes do not presently exist. That is their objective. That is what they seek. That's what they want.

So there is no dispute about it. We cite that case at some length. In that case the Commission held not that through routes do exist. The Supreme Court in overturning it said that if you take the construction which the Commission [fol. 977] had taken in that proceeding and hold, well,

the subject is a rate for one point, and there is another rate beyond another point, that through routes exist, then through routes will exist between all points in the United States. I think it is a very important case in this proceeding, if the Court please.

So, then, if they could have proceeded under 1(4) and under 15(3) and 15(4), as this Court well knows—and they did start to proceed on that basis—if the public interest required it, the Commission could have required through routes. Not the circuitous routes which would be here involved, but they could have required, for example, that other roads participate, so that here when you get up to here, for example, you get on the S.P. and S. lines, and the S.P. & S. Railroad could have been included in those routes and in those rates and could have actually participated in the revenue. Here the S.P.&S. is not named as a defendant in this proceeding. The S.P.& S. could then have taken the traffic going to Eastern Washington, east of the Cascades. The S.P.& S. could have then moved that traffic directly to points east, from which it then could have been interchanged at Pasco or Spokane to the Northern Pacific and moved on to destinations further east.

Now, that is what they could do under Paragraph 1(4) of the Act. And the same going west here (indicating on [fol. 978] map), and you would have had very efficient routes.

But the Commission found that the public interest did not require it. The plaintiff agrees with the Commission and says the public interest does not require it. But it says that these defendants have violated Paragraph 4 of Section 3 of the Act.

Well, Paragraph 4 of Section 3 of the Act came into the Act at the very inception and is not changed in the 77 years that have elapsed. At that time carriers were under no injunction to establish through routes or through rates. They had a completely free hand, subject only to 3(4). And 3(4) provides that you cannot discriminate in facilities. But how can you extend facilities to a point that is a thousand or two thousand miles away?

Congress was talking about the common law duty that carriers that met together in the same town, they had to treat each other alike. They couldn't just go ahead and

establish routes with one carrier and refuse to establish them with another.

They also provided that you could not discriminate in your rates.

That provision remained unchanged, and finally in 1906 they said, "Well, there are some through routes in the [fol. 979] United States, but there are not enough." Now, a through route is a simple thing. A through route is simply a holding out of the roads together to move freight over that route. So in 1906 in the Hepburn Act Congress gave the Commission powers for the first time to prescribe through routes. Then the Supreme Court held in 1907 that, well, if there was one through route, that the Commission could not require that a second route be prescribed so there could not be competition.

Congress said this was bad. So in 1910 they again extended it and gave the Commission powers to prescribe through routes, subject to the short haul limitation that a carrier was entitled to have its long haul protected.

Then there are two exceptions to that in the Act today. If efficient and economical transportation is required and will not result in a—(word unintelligible)—or in circuity, they can short-haul it. And of course there is a short haul involved here because my road, the Northern Pacific, owns a half interest in the S.P.& S. Railroad. We are under common management and control. And the S.P.& S. comes down to Bend. So does the Union Pacific. So, of course, if what is sought here is accomplished, we will be short-hauled some 246 miles up to Bend.

[fol. 980] The plaintiff says, "Well, that isn't involved because I don't seek through routes direct. All I seek to do is end the discrimination at this junction 490 miles from my railroad, so it should not be considered."

The findings with respect to the short haul related simply and solely to their finding that through routes and rates were not required under 1(4), 15(3) and 15(4) of the Act.

Now, I think it is interesting they have gone ahead and completely abandoned that. They say, "Well, now, there is discrimination."

I think it should also be mentioned, too, despite all their work on this case, they have come up with one case, 270 U.S., with which the Court is familiar. And as the Court well knows, Michigan City, Indiana, all that was involved was switching. Five carriers. One carrier says he has switching arrangements with Carrier No. 2, "We do not have switching arrangements with other freight carriers. We think we have been discriminated against." The Commission so held. On appeal the plaintiff said to the Supreme Court—what they said was, "Well, we do not have a direct physical connection." There was actually a distance of a little over 1.38, a little over three miles—"and therefore there is a difference in circumstances and conditions."

[fol. 981] They did not say, "We are not a connecting line within the meaning of the Act," they said, "There is a difference in circumstances and conditions, such that we should not be required."

The Court held discrimination could, of course, be removed, and held that despite the fact that there was a difference, true, the Commission had found there to be sufficient similarity that they could not substitute their judgment for that of the Commission.

I submit it's clearly distinguishable and in no way in point in this proceeding.

So I might say further, too—and I guess I am out of time, unfortunately—but we have—I just want to clear this one point up—the Northern Pacific has for more than 50 years participated via Portland with the Southern Pacific in joint through rates. It has not done so with Western Pacific because of the tremendous back haul. For example, let's take just one illustration. Let's take a shipment going to Portland. If the joint through rates that the plaintiff seeks were established, that shipment comes up the Bieber on the Western Pacific, at Bieber it goes to the Great Northern, the Great Northern takes it up to Wishram, 106 miles west of Vancouver, the Northern Pacific gets it at that point and takes it up around Auburn, and [fol. 982] then over to Spokane. That bill of lading that goes along with that shipment shows the route. The Great Northern knows where that shipment is going. If the shipment is routed Great Northern, it goes directly north to Wishram and back east to Spokane.

Plaintiff says, "Well, I don't seek through rates. All I seek to do is eliminate discrimination. I don't care how Northern Pacific handles that shipment north of Portland."

But the short answer to that is Paragraph 8 of Section 15 requires that Northern Pacific follow the routing that the shipper affixes on the bill of lading, and follow it right to the T.

But even assuming their whole argument, assuming that they could do anything with it despite the Act, despite what the rulings provide, nevertheless you would still have 106 miles west and 106 miles east. All of that could have been eliminated if plaintiff had gone ahead and proceeded under 1(4) and 15(3) and 15(4) of the Act in asking the Commission to prescribe joint through routes and rates, which it has not done, and which it has completely abandoned.

So I submit, Your Honors, that if connecting line is construed as this plaintiff would seek to have it construed, there would be no need for Congress to confer its power [fol. 983] on the Commission to prescribe through routes and rates and expanding that power in 1910. It is wholly without precedence, wholly without authority.

I am sorry, I think my time has elapsed. I thank the Court.

Judge Merrill: Do you have some rebuttal argument to present, Mr. Treanor?

Rebuttal Argument by Mr. Treanor

Mr. Treanor: Yes, Your Honor.

Your Honors, first I would like to observe that in the rather dramatic pointing out of the Commission's efforts to compare transportation characteristics over the preferred and discriminated line, that while there was emphasis to point to the movement along this line over the prejudiced line, there was a studious avoidance of showing the various directions the shipment on S.P. routes take.

There was an avoidance of pointing out that in the Los Angeles area where the Santa Fe is the beneficiary of the routes, the non-discriminatory routes and rates that we seek, that there is as much of a bend coming into Los

Angeles over the Santa Fe as there is in this direction. As a matter of fact, when the Commission compared the alleged length of the two routes, it compared only the single [fol. 984] line shorter portion of the Southern Pacific route, and compared at all times the longer length of the Western Pacific route.

Mr. Farrell—and I don't want to let this get away from me—persists in pointing out that if the Southern Pacific traffic comes to this point, destined to points on the Northern Pacific east of the Cascades, it moves over their subsidiary, S.P.& S., and he says they would have to move our traffic up to Auburn and over and not use their subsidiary because their subsidiary is not a defendant in this case.

We say that if the order to cease and desist from discrimination is entered, the Northern Pacific will soon voluntarily find that they will publish the same rates over their subsidiary.

But I would like to point something else out to the Court. Mr. Farrell says that the law requires them to follow the shipper's routing, and if the Northern Pacific is in there and not the S.P.& S., they must move it via Auburn. If that is the case, their chief witness at the hearing testified that he is violating the law, because he testified that as a matter of operating convenience, regardless of the routing shown in the bill of lading, to a Northern Pacific point east of the Cascades, the traffic is moved over their shorter subsidiary route.

[fol. 985] Now, the Commission has made, and we think correctly, a point of emphasizing to us that the S.P.& S. must, for rate-making purposes, be considered a part of the Northern Pacific-Great Northern system, and I don't know how they can eliminate rate discrimination themselves and not eliminate it over their subsidiary.

The Commission, I believe, Your Honors,—Mr. Ginnane stated right at the outset this is a question of: How is the Western Pacific being hurt and the public interest is really not too involved here? We think it is. We have the same conviction that the public interest is involved, and we submit to Your Honors that the overwhelming testimony, the

only testimony, as a matter of fact, regarding the public interest was put in by Western Pacific. And we suggest that any discrimination, an act of discrimination—

Judge Zirpoli: Does this become germane since you abandoned 1(4)?

Mr. Treanor: Yes, sir, to this extent—only to this extent: The shipping interest is always in competition. I don't think you can disregard the shipper interests with regard to the competition. As a matter of fact, Your Honor, when the Bieber Route was born by the Commission, the whole emphasis was on "At last we have a route which will compete with the Southern Pacific and give it—" In [fol. 986] fact, almost the words of the Commission was, "The only area that has any competition, that will give any competition to the Southern Pacific, is a small area around Los Angeles served by Union Pacific."

Now, the Commission mentioned the Rio Grande case to you. However, Your Honors, the Rio Grande case was not decided on the question of connecting line status. And Mr. Farrell said to you, and he tipped his hat and said that Western Pacific worked very hard in this case, but they could only come up with one case—the Chicago, Indianapolis & Louisville.

Well, I submit, Your Honors, that all of them in their number have worked very hard, too. And what have they come up with? They come up with Atlantic Coastlines v. The United States, the issue which we have already discussed. There is very little case law on the subject. But I do submit to you that in their attempt to discredit the applicability of Chicago, Indianapolis & Louisville, they have overlooked the very precise language of the Court that there was a complaint made to the Court that causing the discrimination to cease would have the effect of establishing through route and joint rates.

Now, Your Honors, if the absence of joint rates, through routes, and the absence of joint service referred to, con- [fol. 987] sidered by the Court there, is not clearly indicated by that language, I don't know how clearer it can be. Both of the elements that we are complaining about here were present in that case.

Now, mention has been made of the pipe traffic, the cast iron pipe traffic. That traffic, Your Honors, moves and has moved for over ten years in substantial quantities over the very route that will exist if the discrimination ceases. This record contains not one word of testimony which casts an adverse reflection upon the service which that traffic has had over the Bieber Route to its destinations on the Union Pacific and Northern Pacific. The Examiner so found. There is no reason why all classes of traffic cannot move as expeditiously, as economically, and as efficiently as that traffic.

We have been accused of putting in comparisons of service from points east of the Cascades via Wishram. That is not so, Your Honors. Seattle, Washington, is a point served in common by the various defendants. Consolidated Dairy Company, a major shipper located in Seattle on the lines of the Northern Pacific, testified without contradiction that he prefers to use the Bieber Route. If he wants to use the Bieber Route, he must ask the Northern Pacific, on whose line he is located, to come in, pick up his traffic, [fol. 988] and ship it to the Great Northern for movement via the Vancouver-Portland area and then south over the Bieber Route. That witness testified that he finds he has to wait 24 hours at Seattle for that switch from the Northern Pacific. And yet the service is faster. So he has been putting most of his traffic over the Bieber Route from Seattle, and the only difference will prevail, if this discrimination is struck down, will be that he won't have to wait 24 hours to put his traffic in the flow of commerce. He can move it down over the Northern Pacific. And incidentally, the Northern Pacific will benefit because they will get the revenue which now goes to the Great Northern. And I don't see how they can complain about correcting that situation.

It has been emphasized to you that the essence of a through rate or a through route is the holding out. But the essence of discrimination is the holding out to one and the withholding from the other. And this is what we complain about.

We don't think the defendant should be able, that they should be allowed to pick and choose who will be able to participate in this traffic.

The seriousness of the situation I think is most emphasized by the fact that annually 2,500 carloads of traffic which either originate or terminate on the plaintiff's line [fol. 989] must be surrendered to the Southern Pacific only because they are destined or have originated at points served by the Northern Pacific and the Union Pacific.

And when one of the parties says to you, "Well, 30 cars found their way over the Bieber Route to our line by mistake," let me say to Your Honors that it is no mistake which has happened here. The shippers are forced to give up—give their traffic which could move over the Bieber Route.

And much emphasis has been made about the fact that the Southern Pacific through the Bay Area is a single-line road. And yet what do the discriminatory practices do? They take traffic which originates on the Western Pacific Railroad, which belongs on the Western Pacific Railroad, and it must be surrendered to the Southern Pacific. That makes it automatically a two-line haul. And if the two-line haul is so odious that it doesn't justify an end to this discrimination, it certainly doesn't justify it being maintained. And this is something that we think the Commission completely missed in their evaluation of the evidence.

The comment has been made that for 25 years Western Pacific has sat back on this. Well, I don't know why they did before I got there. I don't know whether their previous [fol. 990] counsel failed to see—and I don't mean to take any bouquets for myself, but when this case was presented to me within a year after I joined the carrier from another carrier, I had no difficulty in seeing it.

But in investigating why this had happened in the past, why we waited so long, I got the following answers:

1. In the early years— Picture this little railroad trying to build up to the giant of the Southern Pacific— In the early years it probably wasn't prepared to take on the battle. It probably couldn't show that it could perform as well as the Southern Pacific did.

And then the war came along and the Bieber Route was used to a tremendous capacity, and the road grew strong, and the road grew firm. And it took on new management after the war, aggressive management. And all these people that tell you we put in no testimony about our comparative statistics of our line overlook—and I don't know why—the testimony of Mr. Donald Loftus, Director of Research for our railroad. And Mr. Loftus, in addition to putting in tremendous testimony on the economic growth of the area, testified as to the tremendous improvements that have been made in the physical plant of the Bieber [fol. 991] Route as it applies to the Western Pacific segment thereof.

And so in 1952 when the pipe company asked for the rate, and they were turned down until they went through the formal complaint route, they put the rates in. All right, the Western Pacific was lulled into a false sense of security. "We are going to get them now. They are going to work with us."

Well, nothing happened until 1959 when the automobile plant sought some of our property. And then once again we said, "Please put the rates in." Nothing doing. We filed a complaint. They withdrew from battle and put the rates in immediately before the hearing.

But they didn't tell you this, Your Honor. That plant wasn't just not built. That plant went to our competition which had the routes and the rates that we are seeking here. And that plant is built, but it is served only by Southern Pacific. They couldn't wait for us to correct this situation.

And so finally we decided that it was time to face up to the issue and not be led to the conclusion that we might get them by their grace, by their extending them to us.

Judge Sweigert: Pardon me, Mr. Treanor. Can I ask you one question, and the line of your argument suggests it: You are arguing that various circumstances considered [fol. 992] by the Commission, and so forth, as though it were still an open, factual question. Now, as I understand it, the Commission finally found that there was dissimilarity of circumstances.

Now, would you state what you would suggest be the theory of this Court in upsetting that finding of the Commission, having in mind the limited power that the Court has?

Mr. Treanor: Yes, Your Honor. Two points: First, we believe that the ultimate conclusion does not qualify as a bona fide finding under the Act. To say that the Western Pacific or the Bieber Route is longer and involves more operating condition, that finding, standing by itself, has had no proper foundation laid for it, and therefore, standing by itself, is not a finding on a material issue of fact such as the Commission is required to make under the Administrative Procedure Act.

Now, proceeding beyond that, however, if Your Honor should find that conclusion, or such other conclusions as may be culled out of the record, or the Commission's report, if they qualify as findings, then we ask that you find them to be absolutely arbitrary and capricious and beyond the power of the Commission because they are directly contrary [fol. 993] to the record. For example, if we can assume—

Judge Zirpoli: What is the test to apply to find out whether they are arbitrary or not? What is the test that we are to apply to determine what constitutes a similarity or a dissimilarity?

Mr. Treanor: I would say, Your Honors, that the major test is performance. As Your Honor inquired earlier of some of the previous arguers here, is it the inherent physical layout or is it the effect upon the moving, the hauling of goods?

Judge Zirpoli: Has anyone so defined the test for similarity or dissimilarity?

Mr. Treanor: I thought I had to the Commission, Your Honor.

Judge Zirpoli: I don't mean counsel; I am talking about some court or someone who has had some approval. Has someone defined it before so that it has some acceptance?

Mr. Treanor: Well, Your Honor, I would say this: The very fact that the Commission saw fit to refer to Routings Coal as its authority for its proposition here is an indica-

tion that there is no really clear-cut, definable judicial or administrative authority for the test which is to be applied. I think the test has to be applied on each set of facts as it comes up.

[fol. 994] And as indicated earlier in questions, from the Court, the question of transportation characteristics from Southern California to Portland, that bridge was crossed a long time ago by the Interstate Commerce Commission when it, in full recognition of our somewhat longer length, in full recognition of the operating characteristics that we would have to encounter, still permitted us to establish the route for the purpose of meeting the competition of Southern Pacific.

Now, as to the conditions north of Portland, Mr. Higgins refers to the interchange differences up there, overlooking the fact completely that Northern Pacific interchanges at exactly the same point with the Bieber Route as they interchange with Southern Pacific, overlooking the fact that the Commission— And this is something we do have some authority on—the Commission has repeatedly said that interchange arrangements are an operating matter to be arranged by mutual agreement between the carriers involved. And it has prescribed certain standards.

The receiving carriers, for example, will decide where, within reason, it will receive the cars from its connection. So it is a mutual operation, a mutual obligation there. And the Commission has said, "If you can't agree as an oper-

[fol. 995] ating detail as to how you will interchange, we will do it for you. We have the facilities set up to do that for you. We will litigate that for you."

So, therefore, I say that the facts of this case—and this is why we complained to this Court, Your Honors. We are not here saying that the Commission looked at the evidence, found us wanting, and yet obviously we should have won. Now, in the Routings case which they rely on, it is significant that the facts were not in dispute. The facts of dissimilarity were not in dispute. And the party that was complaining there said, "Don't look at what the evidence is, but only apply the test beyond the point of interest."

We don't say that, Your Honor. We are complaining because the evidence has not been looked at. And I don't think that the Commission by merely saying, "Look, we did refer to the Southern Pacific evidence"—which was a carefully contrived and selected study—"and compared it to your route, and that shows you shouldn't be performing as well as you are."

We say the test should be: What did the 16 shippers testify? Well, they testified, most of them, as to performance.

Judge Merrill: You had better bring your argument to a close, if you will.

[fol. 996] Mr. Treanor: Thank you, Your Honor. The only thing that I would like to close with is the position that, contrary to what the Interstate Commerce Commission has suggested, there is only one thing we see here, Your Honors. That is the opportunity to make our physical route a practical route, under the test suggested by the Southern Pacific, and that is by non-discriminatory rates.

Thank you.

[fol. 997] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

No. 41779 Civil

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, et al., Defendants.

Walter G. Treanor, E. L. Van Dellen, R. W. Bridges, San Francisco, California, Attorneys for Plaintiffs The Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Company.

William H. Orrick, Jr., Assistant Attorney General, Cecil F. Poole, United States Attorney, Charles Elmer Collett, Assistant United States Attorney, Attorneys for Defendant United States of America.

Robert W. Ginnane, General Counsel, Robert S. Burk, Attorney, Interstate Commerce Commission, Washington 25, D. C., Attorneys for Intervenor Interstate Commerce Commission.

Charles W. Burkett, W. Harney Wilson, San Francisco, California, Attorneys for Intervenor Southern Pacific Company.

Vaughan, Paul & Lyons, Varnum Paul, San Francisco 4, California;

Earl F. Requa, Frank S. Farrell, St. Paul, Minnesota, Attorneys for Intervenor Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company.

[fol. 998] F. J. Melia, J. H. Anderson, William P. Higgins, Omaha, Nebraska;

Robert N. Lowry, San Francisco, California,

Attorneys for Intervenor Union Pacific Railroad Company.

No appearance for Intervenor The Atchison, Topeka & Santa Fe Railway Company.

OPINION AND JUDGMENT

ORDER DENYING PETITION—June 19, 1964

Before Merrill, Circuit Judge, and Sweigert and Zirpoli, District Judges.

ZIRPOLI, District Judge

This is an action brought under the Judicial Code, Sections 1336, 1398, 2284 and 2321 through 2325 of Title 28, United States Code, to enjoin, annul and set aside a report and order of the Interstate Commerce Commission. The plaintiffs, Western Pacific Railroad and its subsidiaries,[1] claim that the defendants[2] are engaged in discriminatory

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[1] The Sacramento Northern Railway and the Tidewater Southern Railway Company.

[2] The defendants named in the complaint filed in the Commission action were: The Atchison, Topeka & Santa Fe Railway Company; The Great Northern Railway Company; The Northern Pacific Railway Company; The Union Pacific Company; The Camas Prairie Railroad Company, jointly owned by Northern Pacific and Union Pacific; The Pacific Coast R.R. Co.; The Spokane International Railroad Company, a subsidiary of the Union Pacific; and the Washington, Idaho and Montana Railway Company. The Northern Pacific and Union Pacific and their subsidiaries denied the allegations of the complaint. The Great Northern, Pacific Coast, Santa Fe and the Washington, Idaho and Montana answered the complaint with expressions of willingness to establish and maintain the routes and rates sought. The Southern Pacific Company intervened in opposition to the complaint.

rate practices at the Portland, Oregon interchange, in violation of Section 3(4) of the Interstate Commerce Act; 49 U.S.C. §3(4). Section 3(4) provides as follows:

> "All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the inter- [fol. 999] change of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III."

Several issues were ruled on by the Commission which are challenged here;[3] but since we agree with the Commis-

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[3] The Commission noted that although plaintiffs had "indicated a willingess to rely alone on the alleged violation of Section 3(4)", they had not withdrawn their Section 1(4) [Title 49 U.S.C. Sec. 1(4)] allegations nor their request for "prescription of through routes", a remedy related to a Section 1(4), rather than a Section 3(4) violation (316 I.C.C. at 810). The Commission ruled on both issues. On the Section 3(4) issue, after a lengthy discussion of the law and the facts, the Commission found (316 I.C.C. at 810):

> "There is, therefore, no basis for a finding that the carriers are connecting lines within the meaning of section 3(4)." It then went on to say: "Even if the complainants were connecting carriers, the evidence of record does not establish the similarity of circumstances and conditions which justifies equality of treatment." This last quoted issue this Court need not and does not reach. On the section 1(4) issue, which plaintiffs do not now urge, the Commission found (316 I.C.C. at 811): "On the basis of this record, we cannot find that the public interest would be served by requiring the establishment of joint rates and through routes which are substantially slower and costlier than the present route." The Commission ordered plaintiffs' complaint dismissed because (316 I.C.C. 811):

(footnote continued on next page)

sion's conclusion that plaintiffs are not a "connecting line" within the meaning of Section 3(4) of the Act, we find it unnecessary to resolve the remaining issues presented by the complaint.

The factual background of this case is as follows: The two routes considered herein are called the Bieber route and the Southern Pacific route. The former was created by an order of the Commission in 1931 and was designed to be a competitor with the Southern Pacific route. See *Great Northern Ry. Co. Construction,* 166 I.C.C. 3, 170 [fol. 1000] I.C.C. 399. For purposes of this case, the Bieber route consists of the Santa Fe from points in southern California to Stockton, California, thence Western Pacific to Bieber, California, and thence Great Northern to Portland, Oregon. This line extends along the eastern side of northern California through eastern Oregon to Wishram on the Columbia; from Wishram the line runs to Vancouver, Washington and thence to Portland, Oregon. The Southern Pacific route extends from points in southern California by either Santa Fe or Southern Pacific, through the central part of northern California and central Oregon to Portland. Southern Pacific and defendants have maintained a system of through routes and rates at the Portland interchange for over 50 years. With the exception of a few

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"We find that the failure and refusal of the defendants to establish through routes and joint rates with the complainants through Bieber and Portland, between points in California, on the one hand, and points in Oregon, Washington, and Idaho, on the other, on the same basis as those published in connection with the Southern Pacific through Portland, is not shown to be unjust or unreasonable, nor to result in discrimination against the complainants in violation of section 3(4) of the act; and that the establishment of through routes and joint rates in connection with the complainants, through Bieber and Portland, is not shown to be necessary or desirable in the public interest."

Other issues raised in the complaint before this Court, and which this Court need neither reach nor resolve, relate to the evidence, testimony rejected and findings of fact that the Commission is alleged to have either failed to make or erroneously found.

commodities, defendants have refused to establish a similar system of through routes and rates with Western Pacific.

A connecting line within the meaning of Section 3(4) is one which has either a direct physical connection at the common interchange or is one which makes up a "through route" through the interchange point. *Atlantic Coast Line R. Co.* v. *United States*, 284 U.S. 288 at 293 (1932). Because Western Pacific terminates at Bieber, California and is therefore the middle link in a three line route, it does [fol. 1001] not have a direct physical connection with the defendant at Portland, Oregon.

The criteria for the determination of whether a through route exists are set forth in *Thompson* v. *United States*, 343 U.S. 549, 557 as follows:

> "Existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and division of transportation charges, or the use of a proportional rate to or from junction points or basing points. These incidents named are not to be regarded as exclusive of others which may tend to establish a carrier's course of business with respect to through shipments.
>
> "*In short, the test of the existence of a 'through route' is whether the participating carriers hold themselves out as offering through transportation service.* Through carriage implies the existence of a through route whatever the form of the rates charged for the through service." (Emphasis added)

Plaintiff properly concedes that it does not meet the above test[4] because the existence of a few instances of joint rates

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[4] Plaintiffs' opening brief, page 8, states: "There is little doubt that, under the doctrine of the *Thompson* case, supra, there are not, as yet, a full line of through routes over the Bieber route to or from Northern or Union Pacific points."

and through routes on some commodities is not sufficient to establish a through route generally. *Chicago M. St. P. & P.R. Co.* v. *Spokane P. & S. Ry. Co.*, 300 I.C.C. 453 (1957), aff'd *Chicago M. St. P. & P.R. Co.* v. *United States*, 366 U.S. 745 (1961); *Denver & R.G.W.R. Co.* v. *Union Pac. R. Co.*, 351 U.S. 321 (1956). Therefore, because plaintiff does not meet the test of the *Atlantic Coast Line* case, it is not a "connecting line" within the meaning of section 3(4).

Plaintiff's reliance on *Chicago, I & L. Ry.* v. *United States*, 270 U.S. 287 (1926) is misplaced. This case involved reciprocal switching arrangements and presented no question of whether the carriers in that case were "con-
[fol. 1002] necting lines" for section 3(4) purposes. Moreover, the case was decided prior to the *Atlantic Coast Line* case. Plaintiff's principal argument is that the definition of a "connecting line" is not limited to the definition of *Atlantic Coast Line*. This Court is satisfied that the present definition fully comports with the statutory purpose, and that any further expansion of the term is not warranted. Because the Supreme Court has not rendered any decision on this question since *Atlantic Coast Line*, this Court is bound to follow that decision. Any further liberalization of the present definition will have to come from the Supreme Court.

It Is Therefore Ordered that the petition to enjoin, annul and set aside the order of the Commission is denied, and the complaint is dismissed.

Dated: June 19, 1964.

Charles M. Merrill, Circuit Judge, William T. Sweigert, District Judge, Alfonso J. Zirpoli, District Judge.

[fol. 1003] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 41779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed August 17, 1964

I

Notice is hereby given that The Western Pacific Railroad Company; Sacramento Northern Railway; and Tidewater Southern Railway Company, plaintiffs in the above-entitled case, hereby appeal to the Supreme Court of the United States from the final judgment dismissing the complaint against the report and order of the Interstate Commerce Commission and thereby denying the petition to enjoin, annul and set aside such order, which judgment was entered on June 22, 1964.

This appeal is taken pursuant to 28 U.S.C. §§1253 and 2101(b).

II

The clerk will please prepare a transcript of the record in this case for submission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The complaint, including appendices A, B, and C attached thereto, filed September 20, 1963.

2. Answer of intervening defendants Northern Pacific Railway Company, Camas Prairie Railroad Com-
[fol. 1004] pany, and Walla Walla Valley Railway Company, filed on or about November 4, 1963.

3. Answer of intervening defendant Union Pacific Railroad Company filed on or about November 25, 1963.

4. Answer of intervening defendant Southern Pacific Company filed on or about December 16, 1963.

5. Answer of intervening defendant Interstate Commerce Commission filed on or about December 16, 1963.

6. Answer of the United States of America filed on or about December 16, 1963.

7. Answer of intervenor The Atchison, Topeka and Santa Fe Railway Company filed on or about January 13, 1964.

8. Transcript of Oral Argument, June 5, 1964.

9. That portion of the record before the Interstate Commerce Commission comprised of the following items submitted to the Court by plaintiffs:

Certified copies of the following documents in Docket No. 33679—*The Western Pacific Railroad Company*, et al. v. *Camas Prairie*, et al.

(1) Complaint, filed February 10, 1961,

(2) Separate Answer of The Atchison, Topeka and Santa Fe Railway Company, filed March 2, 1961,

(3) Separate Answer of Northern Pacific Railway Company, et al., filed March 10, 1961,

(4) Answer of Union Pacific Railroad Company and Spokane International Railroad Company, filed March 13, 1961,

(5) Answer of Great Northern Railway Company [fol. 1005] and Pacific Coast R. R. Co., filed March 15, 1961,

(6) Answer of Washington, Idaho, and Montana Railway Company, filed March 16, 1961,

(7) Petition of Southern Pacific Company for leave to intervene, filed at hearing held May 8, 1961,

(8) Transcript of proceedings held in San Francisco, California, May 8, 1961,

(9) Transcript of proceedings held in San Francisco, California, May 9, 1961,

(10) Transcript of proceedings held in San Francisco, California, May 10, 1961,

(11) Exhibits 1 to 35, both inclusive, filed at the hearings held May 8, May 9, and May 10, 1961 at San Francisco, California,

(12) Order of the Commission denying Petition for Reconsideration of Report and Order of Division 2, entered January 18, 1963,

(13) Petition of The Western Pacific Railroad Company, et al., seeking finding that issue of general transportation importance is involved, filed January 30, 1963,

(14) Order of the Commission designating this proceeding as one involving an issue of general transportation importance, entered February 14, 1963,

(15) Petition of United States for leave to intervene for the purpose of petitioning the Full Commission for reconsideration of the Report and Order of Division 2 and to be heard on Oral Argument, filed July 26, 1963,

[fol. 1006]

(16) Petition of United States to Full Commission for reconsideration of Report and Order of

Division 2, and request of United States for Oral Argument before Full Commission, filed July 26, 1963,

(17) Order of the Commission denying petitions of United States, entered August 9, 1963, served September 9, 1963,

(18) Petition of United States to Full Commission (1) to vacate its Order served July 30, 1963; (2) to reopen the proceeding for the purpose of considering petitions of the United States filed July 26, 1963 and such responses thereto as may be filed by the parties; (3) to hear Oral Argument if then warranted; and (4) to issue a decision stating findings and conclusions and the reasons or basis therefor upon all material issues as well as an Order granting or denying the relief sought, dated August 7, 1963,

(19) Carbon copy of letter dated September 10, 1963, at Washington, D.C. addressed Mr. John N. Dougherty, Attorney, Department of Justice, Washington 25, D.C., signed Harold D. McCoy, Secretary,

10. Opinion and Judgment of this Court filed June 22, 1964,

11. This Notice of Appeal.

III

The following question is presented by this Appeal:

The Western Pacific Railroad Company makes up the middle segment of a railroad through route (the Bieber [fol. 1007] route) which has been created, established, and maintained as a single unit extending between Portland, Oregon and Los Angeles, California for the purpose of providing railroad competition with the Southern Pacific route—the only other north-south railroad route serving

the Pacific Northwest and the State of California. Union Pacific Railroad and Northern Pacific Railway, although establishing and maintaining a system of through routes and rates via the Portland Gateway (the common point of interchange between such railroads and both Southern Pacific Company and the Bieber route) with Southern Pacific Company, has refused to establish a similar system with the Bieber route and has thus discriminated against Western Pacific on traffic moving through that interchange.

The question is whether Western Pacific is a "connecting line" within 49 U.S.C. §3(4), which prohibits discriminatory rates and practices between "connecting lines", even though Western Pacific does not have a direct physical connection with Union Pacific and Northern Pacific at the common Portland Gateway and even though Western Pacific has not, in the past because of the discrimination, been permitted to make up a through route through the common interchange point of Portland, Oregon.

E. L. Van Dellen, Walter G. Treanor, 526 Mission Street, San Francisco, California, 94105, Attorneys for Plaintiffs.

Of Counsel:

E. Barrett Prettyman, Jr., Hogan and Hartson, Attorneys at Law, Colorado Building, 1341 G. Street N.W., Washington, D.C., 20005.

[fol. 1008] Proof of Service (omitted in printing).

[fol. 1011] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

No. 41779—Civil

[Title omitted]

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD TO BE CERTIFIED TO THE SUPREME COURT OF THE UNITED STATES —Filed September 2, 1964

I

On August 17, 1964, Notice of Appeal to the Supreme Court of the United States was filed herein by The Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Company, plaintiffs in the above-entitled case.

II

Intervener Southern Pacific Company desires that additional portions of the record be certified for submission to the Clerk of the Supreme Court of the United States. Intervener Southern Pacific hereby requests that the Clerk prepare, for submission to the Clerk of the Supreme Court of the United States, a transcript of the entire record be-[fol. 1012] fore the Interstate Commerce Commission heretofore submitted to the Court by plaintiffs and not designated in the Notice of Appeal filed August 17, 1964. In addition thereto, intervener Southern Pacific Company requests that the Clerk include in the transcript of the record for submission to the Clerk of the Supreme Court of the United States the following orders of this court:

1. Order granting motion of Union Pacific Railway Company to intervene as defendant, dated November 26, 1963;
2. Order allowing intervention of Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company, dated November 4, 1963;
3. Order allowing intervention of Southern Pacific Company, dated December 16, 1963;
4. Order allowing intervention of Interstate Commerce Commission as defendant, dated December 16, 1963; and
5. Order granting The Atchison, Topeka and Santa Fe Railway Company leave to intervene, dated January 13, 1964.

Charles W. Burkett, W. Harney Wilson, By Charles W. Burkett, Attorneys for Intervener-Defendant Southern Pacific Company.

[fol. 1013] Proof of Service (omitted in printing).

[fol. 1015] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1016]

SUPREME COURT OF THE UNITED STATES

No. 598, October Term, 1964

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Appellants,

v.

UNITED STATES et al.

Appeal from the United States District Court for the Northern District of California.

ORDER NOTING PROBABLE JURISDICTION—January 18, 1965

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

E COPY

FILED
OCT 16 1964
JOHN F. DAVIS, CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. [redacted] 12

THE WESTERN PACIFIC RAILROAD COMPANY, ET AL.,
Appellants

v.

UNITED STATES OF AMERICA, *Appellee*

On Appeal from the United States District Court
for the Northern District of California,
~~Southern Division~~

JURISDICTIONAL STATEMENT

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

THE WESTERN PACIFIC RAILROAD COMPANY, ET AL.,
Appellants

v.

UNITED STATES OF AMERICA, *Appellee*

On Appeal from the United States District Court for the Northern District of California, Southern Division

---

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States District Court for the Northern District of California, Southern Division, dated June 19, 1964, and filed June 22, 1964, denying a petition to enjoin, annul and set aside an order of the Interstate Commerce Commission and dismissing appellants' complaint. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction

of this appeal and that a substantial question is presented.

The opinion of the United States District Court for the Northern District of California, Southern Division, is reported at 230 F. Supp. 852. The opinion and order of the Interstate Commerce Commission are reported at 316 I.C.C. 795. Copies of the District Court opinion and judgment, the Recommended Report and Order of the Hearing Examiner, and the opinion and order of the Commission, are attached hereto as Appendix A.

JURISDICTION

This suit was brought under 28 U.S.C. §§ 1336, 1398, 2284, 2321 through 2325 inclusive, and 5 U.S.C. § 1009 to enjoin, set aside and annul a report and order of the Interstate Commerce Commission. The decision of the three-judge District Court (Appendix A, p. 32a) was dated June 19, 1964, and filed June 22, 1964. Notice of appeal was filed in that court by appellants here on August 17, 1964.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b) and is sustained by *Burlington Truck Lines, Inc.* v. *United States,* 371 U.S. 156 (1962), and *American Trucking Ass'n* v. *United States,* 326 U.S. 77 (1945).

STATUTES INVOLVED

The National Transportation Policy, 49 U.S.C. preceding §§ 1, 301, 901 and 1001; and § 3(4) of the Interstate Commerce Act, as amended, 49 U.S.C. § 3(4), are set forth in Appendix B hereto.

QUESTION PRESENTED

The Western Pacific Railroad Company makes up the middle segment of a railroad through route (the Bieber route) which has been created, established, and maintained as a single unit extending between Portland, Oregon, and Los Angeles, California, for the purpose of providing railroad competition with the Southern Pacific route—the only other north-south railroad route serving the Pacific Northwest and the State of California. Union Pacific Railroad and Northern Pacific Railway, although establishing and maintaining with the Southern Pacific Company a system of through routes and rates via the Portland Gateway (the common point of interchange between Union Pacific, Northern Pacific and Southern Pacific on the one hand and the Bieber route on the other), have refused to establish a similar system with the Bieber route and have thus discriminated against Western Pacific on traffic moving through that interchange.

The question is whether Western Pacific is a "connecting line" within 49 U.S.C. § 3(4), which prohibits discriminatory rates and practices between "connecting lines", even though Western Pacific does not have a direct physical connection with Union Pacific and Northern Pacific at the common Portland Gateway and even though Western Pacific has not in the past, because of the discrimination, been permitted to make up a through route through the common interchange point of Portland.

STATEMENT

For many years prior to 1931, the only railroad route serving the Pacific Coast of the United States (including the States of Washington, Oregon, western Idaho and California) was Southern Pacific Company and its connections. In 1931 the Interstate Commerce Commission, specifically responding to a request for the institution of competitive railroad service, authorized the construction of a short segment of railroad between Klamuth Falls, Oregon, and Keddie, California. *Great Northern Ry. Co. Construction,* 166 I.C.C. 3, 170 I.C.C. 399. This construction created, for the first time, a through route parallel to and competitive with the Southern Pacific route between Portland, Oregon, and Los Angeles, California (see the map on the following page).

This route, popularly known as either the "Bieber" route or "Inside Gateway" route, has been operated from its inception as a single unit for the purpose of competing with the parallel Southern Pacific route between the same points. Of necessity, it is made up of the end-to-end connections of Great Northern Railway Company between Portland and Bieber: The Western Pacific Railroad Company between Bieber and the San Francisco-Oakland-Stockton area of northern California, and The Atchison, Topeka & Santa Fe Railway Company between Stockton and Los Angeles.

For the past 32 years this route has provided the only railroad competition with Southern Pacific Company and the only choice for shippers in this territory. For traffic moving between California and the States of northern Oregon, Washington and western Idaho, both the Southern Pacific and Bieber routes connect

with Union Pacific, Northern Pacific and Great Northern at Portland, Oregon, the only common gateway served by both competing routes. Union Pacific and Northern Pacific have, except for an extremely limited number of commodities,[1] consistently refused to join the Bieber route in through rates on the same level as those carriers participating with Southern Pacific Company, and therefore the joint rates with Southern Pacific are in virtually all instances lower than the combination rates made applicable to the Bieber route.[2]

The result is that in recent years the Bieber route has become unable to compete effectively with Southern Pacific for most traffic moving to or from points served in the Pacific Northwest by Union Pacific or Northern Pacific, although its physical facilities and services are more than adequate for the job. As the Examiner put it, the imposition of higher combination rates "precludes shippers from using the 'Inside Gateway' [Bieber route] from or to such points [in California and the Pacific Northwest]. The complainants are even deprived of traffic which they themselves originate." Appendix A, *infra*, p. 4a.

Western Pacific and its subsidiary lines challenged the present discriminatory practices by filing a complaint with the Interstate Commerce Commission under the provisions of the Interstate Commerce Act, 49 U.S.C. § 3(4), which prohibits such discriminatory rate treatment between "connecting lines" of rail-

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[1] Joint rates are in effect on cast iron pipe, automobiles and livestock. The rates on two of these products resulted from agreements with appellees after complaints were filed, and one from a Commission order. Appendix A, *infra*, pp. 14a-15a.

[2] Appendix A, *infra*, p. 12a.

road.[3] The Hearing Examiner found in favor of Western Pacific and issued an order recommending that the appellees be required to cease the discriminatory practices. Appendix A, *infra*, pp. 1a-7a. A panel of the Commission reversed, holding that since Western Pacific neither enjoyed a physical connection with Union Pacific and Northern Pacific, nor already participated in a full line of through rates with these carriers, Western Pacific was without power to challenge the discriminatory practices. The requirements for "connecting line" status, said the Commission, were set forth by this Court in *Atlantic Coast Line R. Co.* v. *United States*, 284 U.S. 288, 293 (1932). Appendix A, *infra*, pp. 8a-31a.[4] The full Commission certified the case as "of general transportation importance" (Order dated February 14, 1963).

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[3] Western Pacific is treated throughout this brief as encompassing its subsidiary lines, the Sacramento Northern Railway and the Tidewater Southern Railway Company. The Union Pacific, the Northern Pacific and their shortline connections were named as defendants and are commonly referred to throughout this Jurisdictional Statement as appellees. The Great Northern and the Santa Fe were also named as defendants, since the prayer for relief requested a prescription of through routes to which they would be a party, but they were not defendants in opposition and pleaded in support of Western Pacific. Southern Pacific intervened in support of the defendants in opposition.

[4] The Commission also held that the Bieber and Southern Pacific routes are not sufficiently similar. We believe we demonstrated beyond question to the District Court that the Commission's conclusions on this score were wholly fallacious. In any event, the District Court never reached the question of similarity, deciding the case wholly on the issue of "connecting lines". If this Court notes probable jurisdiction, we intend to demonstrate in our brief on the merits and at oral argument not only that the District Court erroneously decided the connecting lines issue but that a remand for further consideration of the issue involving similarity of conditions is unnecessary, since the record fully supports our position in this regard.

Western Pacific appealed to the three-judge United States District Court for the Northern District of California, which agreed with the Commission's analysis of "connecting line" status, denied Western Pacific's petition, and dismissed the complaint. The Court cited not only *Atlantic Coast Line* but *Thompson* v. *United States,* 343 U.S. 549 (1952), and attempted to distinguish *Chicago, I. & L. Ry.* v. *United States,* 270 U.S. 287 (1926). But the court added significantly:

> Because the Supreme Court has not rendered any decision on this question since Atlantic Coast Line [32 years ago], this Court is bound to follow that decision. Any further liberalization of the present definition will have to come from the Supreme Court. [Appendix A, *infra,* p. 36a.]

THE QUESTION IS SUBSTANTIAL

The importance of this case to the transportation industry can hardly be overstated. The Commission recognized its importance by certifying the case as one "of general transportation importance"—a certification made in only .007%, or ¾ of 1%, of the eligible cases handled at the ICC.[5] The United States recognized its importance by entering the case before the Commission,[6] strongly supporting Western Pacific's position, and calling the proceeding one of "unique

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[5] In the first 37 months of the operation of the rule governing cases "of general transportation importance," only 37 cases were so certified out of the 4933 cases handled at the Commission and eligible for certification. These figures were supplied to Western Pacific in two letters, dated September 9 and September 18, 1964, from the Secretary of the Commission.

[6] The United States filed three petitions before the Commission supporting Western Pacific but took no position for or against Western Pacific before the District Court.

importance" which presented issues "of large importance with impact upon large segments of the public and a vast area of the country."[7] The District Court recognized its importance by virtually inviting this Court to review it.

The issues here are vital because, as the United States stated in one of its petitions to the Commission:

> * * * [T]he Pacific Northwest and California have rapidly increased in population, consumption and production and are expected to continue to grow. There is testimony that through routes between defendants and the Bieber route and rates at the same level as those defendants maintain with Southern Pacific would materially assist in the greater industrial development of the Pacific Northwest, provide for a greater and more competitive rail system, and generally assist in the economic growth of the whole area.[8]

As we shall show, the reliance of the District Court on *Atlantic Coast Line R. Co.* v. *United States, supra,* was misplaced. But even if that case stands for what the District Court says it does, the intervening years since it was rendered have resulted in far-reaching changes in the railroad industry. The fact is that in this age of merger, consolidation and sharing of the

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[7] "Petition of United States to Full Commission (1) to Vacate its Order Served July 30, 1963 * * *," filed August 7, 1963, pp. 5, 6.

[8] "Petition of United States to Full Commission for Reconsideration of Report and Order of Division 2 and Request of United States for Oral Argument before Full Commission," filed July 26, 1963, pp. 2-3.

nation's railroad transportation plant,[9] when so many duplicating, paralleling physical lines are disappearing, it is essential that the "Bieber route concept" be preserved. It is essential, in other words, that single-route, multi-line, end-to-end operations which provide all of the services of paralleling lines be protected against discriminatory treatment.

The present language about "connecting lines" in § 3(4) of the Interstate Commerce Act had its genesis in § 3 (par. 2) of the 1887 Act, which required that carriers afford equal facilities for the delivery of passengers and property "to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines." 24 Stat. 380. Except for the addition of the word "fares," the relevant language remained the same in the 1920 amendment. 41 Stat. 479. The latest amendment in 1940 provided that carriers must afford equal facilities for the delivery of passengers and property "to and from connecting lines; and shall not discriminate in their rates, fares and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper." 54 Stat. 903-904, 49 U.S.C. § 3(4).

It should be emphasized that the legislative history of neither the original language nor any of the amendments affords any clue as to precisely what Congress had in mind by the term "connecting lines" except

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[9] In the past seven years alone, 18 rail consolidations have been approved, and additional merger or control cases involving 21 Class I railroads are now pending. See the 78th and preceding Annual Reports of the Interstate Commerce Commission.

that "every variety of unjust discrimination" was to be prohibited.[10] Certainly there was no indication that the section was intended to carry the meaning attributed to it by the District Court in this case. The phrase apparently was patterned after several English and state statutes, and a number of early state decisions had clearly established the concept that, as one of them put it, "Railroads can be connected, either directly or by intervening roads."[11] In other words, "connecting" did not necessarily mean a direct physical connection.

The argument that a carrier must have a direct physical connection with a particular locality in order to be guilty of discrimination against that locality—a contention analogous to the one made here—was first made to this Court as early as 1917 in *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U.S. 136, 144. The Court rejected the argument, pointing out that

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[10] Remarks of Senator Cullom introducing the Interstate Commerce bill in the 49th Congress, 1st session, 17 Cong. Rec. 3476 (1886): "The third section is broader and more general in its terms [than the second section, outlawing the long-short haul differential] and * * * contains a general prohibition of every variety of unjust discrimination. * * * The second part of the section is modeled in part upon the English and in part upon similar statutes in several of the states. The purpose is to require railroads to furnish its connecting roads all reasonable and proper facilities for the interchange of traffic that may be necessary for the convenience of the public, and to prevent one road, or a combination of roads, from 'freezing out' a connecting line by refusing to accept traffic from or deliver traffic to it upon any terms, as has been done."

[11] *Black* v. *Delaware & Raritan Canal Co.*, 22 N.J. Eq. 130, 402 (1871), *rev'd on other grounds*, 24 N.J. Eq. 455 (1873). See also *Atchison Ry. Co.* v. *Fletcher*, 35 Kan. 236, 10 Pac. 596 (1886); *Baltimore* v. *Baltimore & Ohio Ry.*, 21 Md. 50, 89, 91-92 (1864).

"Localities require protection as much from combinations of connecting carriers as from single carriers whose 'rails' reach them." *Ibid.*

The necessity for end-to-end connections was disposed of even more directly nine years later in *Chicago, I. & L. Ry. Co.* v. *United States,* 270 U.S. 287 (1926), which we contend is controlling here. In that case, three of the four respondent carriers refused to make reciprocal switching arrangements with the complainant South Shore electric line, just as appellees in this case have refused to make joint rates with Western Pacific. The South Shore had no physical connection with any of the three respondents and reached them only over the fourth respondent's lines. Nevertheless, the respondents were all held to have discriminated against a "connecting line," the South Shore. The Court posed the issue in this fashion:

> It is argued that, as a matter of law, a carrier cannot be guilty of unjust discrimination unless it is able by its own act to remove the inequality; *that where there is no direct physical connection* with the railroad alleged to be discriminated against, *and no joint service is being rendered* by the three steam railroads with the South Shore, there cannot, in law, be unjust discrimination, because the existing inequality can be removed only by the consent of a third party, the intermediate carrier. [270 U.S. at 292; emphasis added.]

And the Court answered the argument in these terms:

> Unjust discrimination may exist in law as well as in fact, although the injury is inflicted by a railroad which has no such direct connection. Wherever discrimination is, in fact, practiced, an order to remove it may issue; and the order

> may extend to every carrier who participates in inflicting the injury. [*Id.* at 293.]

Thus, the Court dispelled any notion that a direct physical connection was necessary and, further, that the lack of prior arrangements for a through transportation service deprived a carrier of standing to complain of the discrimination.

Contrary to the assertion of the District Court, *Atlantic Coast Line R. Co.* v. *United States, supra,* either is distinguishable from or actually supports the instant case. There, the Court was construing not § 3(4) of the Act but rather the conditions of a lease which had been approved by the Commission. Nevertheless, the Court's language bears on this case, because the lease guaranteed non-discriminatory rates for lines "connecting" with the Clinchfield Railroad. As the Court put both the argument and the answer to it:

> The plaintiffs contend that the restrictive schedules [then being proposed] are consistent with the conditions [in the prior lease] because the Georgia & Florida is not a carrier "connecting with the Clinchfield." The argument is that the Georgia & Florida does not connect since its own rails do not physically abut on the Clinchfield's rails—the connection being made over the Piedmont & Northern, an intermediate carrier. There is no warrant for limiting the meaning of "connecting lines" to those having a direct physical connection with the Clinchfield. The term is commonly used as referring to all the lines making up a through route. [284 U.S. at 293; footnote deleted.]

Several points should be noted. First, the Court clearly held that in common parlance, "connecting"

does not necessarily mean a physical, end-to-end connection. Secondly, the "through route" to which the Court referred was made up of the Georgia & Florida, the Piedmont & Northern, and their more distant connections, which is a route comparable to the Santa Fe, the Western Pacific and the Great Northern in this case. In other words, there *is* a "through route" in the instant case in the sense in which the term was used in *Atlantic Coast Line.* Western Pacific has readily conceded, however, that no "through route" exists here in the sense proposed by the Commission and the District Court, namely, that *the appellees* have held themselves out as offering through transportation service with the Bieber route. The reason there has been no such through service is apparent: the appellees have refused to extend it, and this is precisely the discrimination Western Pacific is attacking.

Having determined that the appellees and the Bieber route together constituted the relevant "through route," the District Court in this case turned to *Thompson* v. *United States,* 343 U.S. 549, 557 (1952), for a definition of "through route." But *Thompson* was considering quite a different problem—one having nothing whatever to do with discriminations between connecting lines under §3(4) of the Act. *Thompson* dealt with § 15(4), which prohibits the Commission from establishing through routes and joint rates when a carrier participating in such a through route would be required to "short haul" itself, *i.e.,* "to embrace in such route substantially less than the entire length of its railroad." Since a carrier can waive its right to its own long haul and accept a Commission route which results in a short haul, the question in *Thompson* was whether the petitioning carriers had in fact waived

their rights by previously offering the public a through service over their respective lines.[12]

The language used by the Court in that case not only has no logical relationship to this one but, if made applicable here, results in a complete anomaly. For if appellees in the instant case had chosen to accord Western Pacific joint rates but at a higher level than the rates they accorded Southern Pacific, the Commission and the District Court would not have hesitated to find an illegal discrimination under § 3(4). Yet because appellees have refused to accord Western Pacific any joint rates at all while at the same time granting them to Southern Pacific, the Commission and the District Court take *Atlantic Coast Line* and *Thompson* to mean that Western Pacific has no standing to object. As the United States put it in one of its petitions to the Commission, "On this reasoning a carrier which has physical facilities to handle traffic with a distant line which reaches it by an intermediary line but chooses to favor the distant line's competitor may take the disadvantaged line entirely out of the protection of section 3(4) by consistent and effective adherence to a refusal to deal."[13]

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[12] The Court has itself recognized that the language in *Thompson* was hardly all-inclusive. It has said: "We there emphasized the purpose of § 15(4) to bar the Commission from compelling railroads to establish through routes resulting in trunkline 'short-hauls' without faithful observance of restrictive conditions imposed by that section. At the same time we recognized that Commission action is not necessary to the creation of through routes. We pointed out that a through route is *ordinarily* a voluntary arrangement, express or implied, between connecting carriers, and that the existence of such an arrangement depends on the circumstances of particular cases." *Denver & Rio Grande Western R. Co.* v. *Union Pacific R. Co.*, 351 U.S. 321, 327 (1956) (emphasis added).

[13] Petition of United States, *supra* n. 7, p. 9.

Atlantic Coast Line and *Thompson* cannot possibly be read as requiring such a result, and § 3(4) cannot by logic or language be given such an interpretation. On the contrary, as this Court said in *Louisville & Nashville R. Co.* v. *United States,* 282 U.S. 740, 749-750 (1931):

> The legislative history of the Interstate Commerce Act shows clearly that the evil of discrimination was the principal thing aimed at. * * * This court has said that the language of the Act "is certainly sweeping enough to embrace all the discriminations of the sort described which it was within the power of Congress to condemn."[14]

In short, "Section 3 outlaws discrimination in all its forms" (*Dixie Carriers, Inc.* v. *United States,* 351 U.S. 56, 60 (1956)), and an artificial interpretation of the section, based not on the intent of Congress but on a mistaken view of this Court's decisions, serves only to perpetuate the very kind of monopolistic combination that the Act has long been recognized as prohibiting.

Although made up of end-to-end connections of separately-owned railroads, the Bieber route was conceived, constructed and operated as a single line to provide competition to Southern Pacific. In any case involving the frustration of that purpose, Western Pacific cannot be treated merely as a completely separate segment of the whole. Even if a physical connection with Portland were necessary, Western Pacific fully qualifies as the essential middle link of the Bieber route, a route which serves no useful

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[14] Citing *The Shreveport Case,* 234 U.S. 342, 356 (1914). See also *Georgia* v. *Pennsylvania R. Co.,* 324 U.S. 439, 450 (1945); *New York* v. *United States,* 331 U.S. 284, 296 (1947).

purpose except as a whole unit. Hampering the maintenance of such a route results in uneconomical and grossly wasteful transportation, contrary to the clear dictate of the National Transportation Policy (preceding 49 U.S.C. § 1). The fact that the Bieber route concept (avoidance of unnecessary duplication of physical facilities) was "ahead of its time" does not justify the refusal to accord its members the right to obtain relief from discriminatory practices. This is particularly true where the discrimination is treated as its own justification. It would be a mockery of the law if a carrier's refusal to engage in nondiscriminatory practices were to form the very cornerstone of its justification.

A voluntary publication of a full line of through rates cannot possibly prove harmful. Where, as in the case of cast iron pipe, the traffic has been allowed to move without the shackles of discriminatory rates, it has moved smoothly and without complaint. There is no reason why the rest of Western Pacific's traffic moving to or from the Union Pacific and Northern Pacific cannot do likewise. Certainly the shippers whose interests are most immediately at stake strongly favor the competitive, nondiscriminatory rates which Western Pacific is seeking.[15]

This case, then, involves far more than the loss to the Western Pacific of an estimated 25,000 freight cars

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[15] Sixteen shipper representatives, representing many varied industries, testified in favor of the nondiscriminatory rates. In addition, after the report and order were issued in this case, over 100 requests from shippers were filed with the carrier rate bureaus for voluntary publication of the rates that Western Pacific was seeking through its complaint. The Commission, however, did not reopen the case for the introduction of this latter evidence. See "Complainants' Petition for Further Hearing for Purpose of Introducing Newly Developed Evidence," filed December 28, 1962.

a year,[16] as important as that loss is. The discontinuance of discriminatory rates in this case would protect and enhance present intramodel competition and would help develop one of the most dynamic and fast-growing sections of the country.[17] It would, in fact, remove the last barrier to the very competition that the Commission held was so essential when it established the Bieber route[18] and that is even more essential today.

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[16] Appendix A, *infra*, p. 17a.

[17] The record shows, for example, that population growth on the Pacific Coast has taken place at a rate three times that of the nation as a whole, that value added by manufacturing and farm marketing cash receipts have both been increasing in this area at rates significantly higher than for the entire country, and that personal income increased 503% between 1940 and 1958 on the Pacific Coast as compared with 355% for the United States. These and other indicators of past and projected growth are shown on Ex. 17, 18; Tr. 42-50, 221-222.

[18] The Commission stated at that time in its *Great Northern* opinion, *supra*, 166 I.C.C. 3: "San Francisco and Portland are now connected directly by the rails of but a single carrier. The California Railroad Commission points out that this dependence upon the ability of a single rail carrier is without parallel as between comparable agricultural and industrial centers anywhere in the United States. [*Id.* at 33.] • • • The proposed line would give that much more transportation and furnish an alternate route should an existing line be broken. Its distance from the coast would be an additional protection against coast or air raids. A witness stated that in a time of National emergency existing lines between California and Oregon would be inadequate unless the country had received ample warnings. [*Id.* at 37.] • • • The new line will aid in the development of a great timber area and some considerable agricultural areas in northern California. As we said in *Construction of Lines in Eastern Oregon*, 111 I.C.C. 3, 37: 'Advantages to the shippers of an additional outlet for their product are apparent. It is desirable that transportation facilities of a high order be available to shippers from the Klamath Basin and central Oregon. The assurance of access to lines other than the Southern Pacific at critical periods is a factor of prime importance to such shippers and is clearly in the public interest. Competition within reason rather than monopoly is in the public interest.' " [166 I.C.C. at 39.]

But on an even higher level, the correct interpretation of § 3(4) by this Court at this time would provide one answer to the revolutionary transformation now taking place in the railroad industry, with virtually every large rail carrier in the country being rationalized by one method or another. We respectfully suggest that this is no time in our history to penalize our smaller carriers, particularly by a misinterpretation of a decision by this Court rendered 32 years ago.

Respectfully submitted,

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APPENDIX A

INTERSTATE COMMERCE COMMISSION

Served August 10, 1961

No. 33679

THE WESTERN PACIFIC RAILROAD COMPANY, ET AL.

v.

CAMAS PRAIRIE RAILROAD COMPANY, ET AL.

Decided .....

Report and Order
Recommended by John F. Wright, Hearing Examiner

On February 10, 1961, the Western Pacific Railroad Company (Western Pacific) and its wholly owned subsidiaries Sacramento Northern Railway (Sacramento Northern), and Tidewater Southern Railway Company (Tidewater Southern), filed a complaint charging the defendants[1] with violations of sections 1 and 3 of the Interstate Commerce Act. The violations are alleged to occur as a result of the refusal of the Northern Pacific, The Union Pacific and their short line connections to join the complainants and the Santa Fe and The Great Northern in the publication of through routes and divisions between California points and points in Oregon, Washington and Idaho on the same basis as that granted by the said

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[1] The defendants are Camas Prairie Railroad Company (Camas Prairie), Great Northern Railway Company (Great Northern), Northern Pacific Railway Company (Northern Pacific), Pacific Coast Railroad Company (Pacific Coast), Spokane International Railroad Company (Spokane), Union Pacific Railroad Company (Union Pacific), Walla Walla Valley Railway Company (Walla Walla), Washington, Idaho & Montana Railway Company (Washington, Idaho & Montana) and the Atchison Topeka & Santa Fe Railway, (Santa Fe).

defendants to the complainants' competitor, the Southern Pacific.

By answers duly filed the Great Northern, the Pacific Coast and the Santa Fe stated that they were all willing to establish voluntarily a general line of competitive joint through freight rates as sought by the complainants. At the hearing the Washington Idaho and Montana made a similar statement on the record and expressed its support of the complainants.

The complainants operate 987 miles of railway lines within the State of California. Some of the major point served by them are San Francisco, Oakland, Alameda, San Jose, Stockton and Sacramento.

The relief sought by the complainants is limited to the area of California, Oregon, Washington and Idaho. Relief is especially sought between points in California and points on the lines of the Union Pacific and Northern Pacific and their short line connections in Oregon, Washington and Idaho. The relief would be applicable to the "Inside Gateway", that is, to traffic moving between points in California via Bieber, Calif., and Portland, Oreg., and thence from or to other points in Oregon, Washington, and Idaho.

The Bieber route, or "Inside Gateway", has been in existence since 1931 and was certificated by the Interstate Commerce Commission in *Great Northern Ry. Co. Construction*, 166 I.C.C. 3, 170 I.C.C. 399. It is one of two major railroad routes through Portland that serve California generally and the Pacific Northwest. The route of the "Inside Gateway" consists of the lines of the Santa Fe, Western Pacific, and the Great Northern.

The second major route is made up of the Northern lines and the Southern Pacific. South of Portland this route is either single line via the Southern Pacific or in conjunction with Santa Fe south of Stockton.

There is another route which serves Southern California but not The Central or Northern Areas. This is the Union Pacific from the Pacific Northwest through Salt Lake City, Utah, and thence to Southern California.

Since the construction of the "Inside Gateway" in 1931 the complainants have participated with the Great Northern in a full line of joint rates via Bieber between points in California and Portland, Oreg., and thence to other points on the lines of the Great Northern in Oregon, Washington and Idaho. These rates are competitive since they are generally the same as those published by the Great Northern with the Southern Pacific via Portland, Oreg., and with the joint rates published by the Northern Pacific and Union Pacific via Portland with the Southern Pacific.

The Southern Pacific and the complainants both serve Northern California generally and have many common points.

The Northern Pacific maintains joint rates with the Southern Pacific via Portland between points in California and points in Oregon, Washington and Northern Idaho. It has an interchange at Portland with the Great Northern but refuses to publish rates via Bieber in connection with the complainants.

The Union Pacific has joint rates with the Southern Pacific between joints in California and points on its line in Oregon, Washington and Idaho. It declines to participate with the complainants from or to the same points via Portland and Bieber over the present routes in effect between the Great Northern and the complainants although the Great Northern connects with the Union Pacific at Portland.

The result of this rate situation is that between points in California and points in the Pacific Northwest when either the Southern Pacific, the Union Pacific or the Northern Pacific participate in a routing with the complainants,

in most instances, combination rates higher than the joint through rates are applicable. Naturally this precludes shippers from using the "Inside Gateway" from or to such points.

The complainants are even deprived of traffic which they themselves originate. A good example is a shipper at Sacramento located on the Western Pacific. This shipper had made numerous carload shipments to Pacific Northwest points exclusive to the Northern Pacific and the Union Pacific during 1959. The traffic moved via the Southern Pacific because of the higher combination rates which would be applicable via Bieber.

In 1960 the shipper applied for through competitive rates via Bieber to destinations on the Northern and Pacific and Union Pacific and their short line connections. In its application the shipper stated that the use of the existing route via Southern Pacific to Portland imposed additional transportation charges over and above those that would apply if the rates were established via Bieber. The additional charges were the Western Pacific's charges for the switch from the shipper's plant to the interchange with the Southern Pacific. These were not absorbed because the traffic was non competitive under the terms of of the Southern Pacific's tariff.

Early in 1961 the Southern Pacific satisfied the shipper by making an exception to its general practice of absorbing switching charges only on competitive traffic. It amended its tariff to provide for absorption of the switching charge at Sacramento. This reduced the shipper's transportation costs to the through rate level and at the same time effectively prevented the complainant Western Pacific from participating in line haul traffic originated on its own line.

The "Inside Gateway" carries considerable traffic to and from Northern California and beyond. The Santa Fe forms the southern segment of the route. During the

five year period 1955 to 1959 the bridge traffic hauled by the Western Pacific ranged from 28,655 to 34,077 carloads. Nevertheless the route is not used to its full capacity. It carried much more traffic during World War II. The complainants' witnesses estimated that because of the lack of joint through rates via Bieber the complainants have been foreclosed from participation in the line haul handling of approximately 25,000 cars per year.

The complainants presented the testimony of 15 shippers. The witnesses represented diverse industries as well as various freight traffic associations. In the main, their testimony was that an additional route would improve railroad service and would avoid any further competitive damage because of the penalties incurred when shipping to points on the complainants' lines. Some of them have found that service via the "Inside Gate", when shipping to and from Great Northern points, to be faster than the Southern Pacific route. They also testified that the additional route would create greater flexibility for transit users.

The defendants interrogated most of these witnesses as to whether or not their testimony had been solicited by the complainants. On brief they endeavored to minimize the testimony of the witnesses because it was solicited. The fact that the testimony was solicited does not of itself affect its weight. The evidence submitted by such witnesses is helpful to the Commission and should be encouraged.

The defendants argue, and presented evidence to the effect, that the through routes and joint rates sought are neither desirable nor required by the public interest and that they would result in an inefficient and wasteful transportation service contrary to the national transportation policy. They further contend that the establishment of through routes would violate section 15(4) of the act. They also claimed that, with minor exceptions, there are no

through routes existing via Bieber between points in California and points on the defendants' lines.

Relying on *Chicago, N., St. T. & P. R. Co.* v. *Spokane, P&S. Ry., Co.*, 300 I.C.C. 453 they say that the existence of joint through rates on only two commodities, that is, pipe and automobiles, does not evidence the existence of through routes on any commodities other than those specifically covered by the published tariff. In addition to those commodities the Commission has heretofore prescribed joint rates via the Bieber route for livestock and class rated traffic.

On brief, the complainants, without waiving their allegations of unjustness and unreasonableness based on section 1(4) of the act, directed their entire argument to the violation of section 3(4), the unlawful discrimination. The mentioned defenses raised by the defendants relate primarily to issues involving sections 15(3) and 15(4) of the act. In the examiner's view of this proceeding problems involving those sections of the act are not reached.

"The defendants in opposition interchange traffic at Portland in the haul of which the complainants participate via Bieber, at competitive joint through rates insofar as cast iron pipe, automobiles, livestock and class rated traffic are concerned. The same facilities used for these interchanges are employed in connection with such higher combination rated traffic that moves via Bieber. There is no difference in the manner of interchange. Nevertheless, the defendants in opposition refuse to participate at competitive rates in an interchange of other traffic at Portland in which the complainants participate via Bieber. At the same time they afford the complainants' competitor, the Southern Pacific a full line of joint through rates via Portland. There is no justification in this record for such treatment of a connecting line. The granting of a full line of rates to one railroad at an interchange point while at the same time limiting the extent of such rates to the

favored line's competitor is the essence of discrimination. It is the type of unlawful discrimination that section 3(4) of the act aims to prevent. It is, of course, a matter for the defendants in opposition, in the discretion of their management to determine the means of eliminating the unlawful discrimination."

The examiner finds and concludes that the defendants' refusal to interchange traffic at Portland, other than cast iron pipe, automobiles, livestock and class rated traffic, in the line haul of which the complainants participate via Bieber, at rates competitive with those afforded the Southern Pacific by them is an unlawful discrimination in violation of section 3(4) of the act and should be removed.

Premises considered it is the ORDER of the examiner that the defendants be, and they are hereby, notified and required to cease and desist, within 45 days from the date this recommended order becomes the order of the Commission and becomes effective pursuant to the provisions of section 17(5) of the Interstate Commerce Act, and thereafter to abstain, from practicing the unlwawful discrimination found herein.

By the Commission, John F. Wright, Hearing Examiner.

Dated at Washington, D. C., this 31st day July, A.D., 1961.

HAROLD D. McCOY,
Secretary.

(SEAL)

INTERSTATE COMMERCE COMMISSION

Service Date August 2, 1962

No. 33679

WESTERN PACIFIC RAILROAD COMPANY, ET AL.

v.

CAMAS PRAIRIE RAILROAD COMPAN[illegible] ET AL.

Decided July 26, 1962

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Report of the Commission

DIVISION 2, COMMISSIONERS FREAS, GOFF, AND HERRING

FREAS, *Commissioner*:

Exceptions to the report and order recommended by the examiner were filed by the defendants and the intervener, and the complainants replied. We have heard the parties in oral argument. Our conclusions differ from those recommended. Exceptions and requested findings not discussed herein nor reflected in our findings or conclusions have been considered and found not justified.

By complaint filed on February 10, 1961, The Western Pacific Railroad Company, and its short-line subsidiaries,[1] hereinafter sometimes collectively called the Western Pacific or complainants, allege that the failure and refusal of the defendants[2] to establish and maintain, between points

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[1] The Sacramento Northern Railway (Sacramento Northern) and the Tidewater Southern Railway Company (Tidewater Southern).

[2] The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), Camas Prairie Railroad Company (Camas Prairie), Great Northern Railway Company (Great Northern), Northern Pacific Railway Company (Northern Pacific), Pacific Coast R. R. Co.

in California, served by the complainants or in connection with the Santa Fe, and points in Oregon, Washington, and Idaho, served by the defendants, chiefly the Union Pacific and the Northern Pacific, joint through rates over routes through Bieber, Calif., and Portland, Oreg., on the same basis as those maintained by the defendants in connection with the Southern Pacific Company (Southern Pacific) through Portland, violates sections 1(4) and 3(4) of the Interstate Commerce Act, and is contrary to the provisions of the national transportation policy. We are asked to prescribe just, reasonable, and nondiscriminatory competitive joint through rates, charges, practices and through routes. We are also asked to hold open this proceeding in the event the parties are unable to agree on divisions, so that the Commission may prescribe divisions.

The Santa Fe, the Great Northern, Pacific Coast, and Washington, Idaho and Montana have indicated their willingness to establish and maintain the routes and rates sought. The Western Pacific, Washington, Idaho and Montana, and numerous shippers and shipper associations presented evidence in support of the complaint, whereas the Union Pacific, Northern Pacific and Southern Pacific (intervener) presented evidence in opposition.

General location of the railroads concerned—The complainants operate for nearly 1,000 miles in California and serve such cities as San Francisco, Oakland, San Jose, Stockton, Sacramento, Modesto, Marysville, Keddie, Bieber, and Oroville. The east-west line of the Western Pacific extends from Salt Lake City, Utah, to the San Francisco-

(Pacific Coast), Spokane International Railroad Company (Spokane), Union Pacific Railroad Company (Union Pacific), Walla Walla Valley Railway Company (Walla Walla), and Washington, Idaho and Montana Railway Company (Washington, Idaho and Montana). The Camas Prairie is jointly owned by the Northern Pacific and Union Pacific. The Spokane is a subsidiary of the Union Pacific, and the Walla Walla is a subsidiary of the Northern Pacific.

Oakland bay area, with a north-south line extending from Keddie to a connection with the Great Northern at Bieber, 490 miles south of Portland. The Western Pacific connects with the Santa Fe at Stockton, permitting service to and from points in southern California, and also with the Union Pacific at Wells, Nev., and Salt Lake City, So far as the territorial scope of this complaint is concerned, it does not physically connect with the lines of the principal defendants, the Northern Pacific and the Union Pacific, and does not reach the involved interchange point at Portland.

The Great Northern, Union Pacific, and Northern Pacific serve, among others, numerous points in Oregon, Washington, and Idaho. In addition to the connections previously noted, to the extent here important, the Great Northern, Union Pacific, Northern Pacific, and Southern Pacific connect at Portland; and the Union Pacific and Southern Pacific connect at Ogden, Utah, and Wells. In the northwestern area, the Great Northern and its connections are competitive with the Northern Pacific. In California, the Southern Pacific is competitive with the Western Pacific and the Santa Fe, and the Union Pacific also serves portions of southern California.

Routes.—The two major routes considered herein are hereinafter called the Bieber route and the Southern Pacific route. The former, to Great Northern destinations, has been in existence since 1931. See *Great Northern Ry. Co. Construction*, 166 I.C.C. 3, 170 I.C.C. 399. This route to such destinations consists of the Santa Fe to Stockton, thence the Western Pacific to Bieber, and the Great Northern beyond; or from origins on the Western Pacific, that carrier to Bieber, thence the Great Northern. The Southern Pacific route consists of the Southern Pacific to Portland, thence the Northern Pacific, Union Pacific, or the Great Northern, depending upon the carrier serving the northwestern destination. The Santa Fe also participates in the

Southern Pacific route on certain movements to or from California points.

The routes sought herein generally consist of the Bieber route as above defined over the Great Northern to Portland, thence the Northern Pacific or the Union Pacific depending upon the carrier serving the northwestern destination.

The Union Pacific, whose line reaches California in the Los Angeles area, participates in routes between points in California on the complainants' lines and northwestern points on its line east of Huntington, Oreg., with interchanges at Salt Lake City and Wells. It also has a route between southern California and certain points in the northwest via Salt Lake City and Pocatello, Idaho. The Union Pacific and the Southern Pacific also participate in routes via Wells or Ogden.

Present rate structure.—The Great Northern participates with the complainants[3] in joint through class and commodity rates for application over the Bieber route. These joint rates are generally the same as those maintained by the defendants in connection with the Southern Pacific through Portland. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company also maintains joint rates with the complainants over routes through Bieber. Also, the Union Pacific participates in joint rates with the complainants over routes through Salt Lake City or Wells, similar to those maintained by that defendant with the Southern Pacific over routes through Ogden or Wells.

The defendants have maintained the joint rates with the Southern Pacific through Portland for over 50 years. The Northern Pacific has refrained from establishing joint rates through Bieber with its strongest competitor, and it is fearful that the establishment of such rates would enable the Great Northern to solicit its traffic. The Union Pacific feels that the existing rates are sufficient to meet the needs

[3] Also the Santa Fe.

of the shipping public. These defendants, however, favor additional rates through Bieber if and when a need therefor is demonstrated. Thus, there are, with some exceptions, no joint rates over the routes sought, and the shipments must move under combination rates, using the rates, local or joint, from and to Portland. These combination rates are generally higher than the joint rates maintained by the defendants with the Southern Pacific.

Traffic may now move over the Bieber route between points on the complainants' lines in California and points in the Northwest served by the Northern Pacific or the Union Pacific and the Great Northern, if interchange facilities with the latter[4] are available at the northwestern point of origin or destination. The charges on such traffic are based on the complainants' and the Great Northern's joint through rates, plus the switching charge for interchange service, except that the switching charge is absorbed by the Great Northern if the point on the complainants' line has interchange facilities with the Southern Pacific.

Traffic may also move via Portland between points served by the complainants and the Southern Pacific, where interchange facilities exist, and points on the Northern Pacific or the Union Pacific which are not served by the Great Northern. A switching charge is made for the interchange in addition to the joint rate published by the Southern Pacific and the Northern Pacific or the Union Pacific.

The complainants point out that the present rate situation deprives them of an opportunity to participate in the line-haul service on traffic originating on their lines. For instance, the Campbell Soup Company, whose Sacramento plant is located on the Western Pacific, shipped over 150

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[4] Portland and Bend, Oreg., Vancouver, Chehalis, Seattle, Tacoma, Spokane, and Centralia, Wash., are representative examples of such points.

carloads of traffic to points served exclusively by the Northern Pacific or the Union Pacific in 1959. This traffic moved over the Southern Pacific route because the combination rates applicable over the route through Bieber exceeded the switching charge and the joint rates in connection with the Southern Pacific.

In 1960, the Campbell Soup Company sought through competitive rates from Sacramento via Bieber to destinations on the Northern Pacific and the Union Pacific or their short-line connections so that its charges might be reduced by avoiding the charge for switching by the Western Pacific. In 1961, the Southern Pacific authorized the absorption of this switching charge. This reduced the shipper's transportation costs, but the Western Pacific still was denied an opportunity to participate in the line-haul movement.

Between points on the Western Pacific and those on the Northern Pacific or the Union Pacific, a number of joint commodity rates are maintained over routes of the complainants' lines to or from a junction point in California with the Southern Pacific, thence that line through Portland and the defendants beyond. The complainants agreed to establish these rates in connection with the defendants over such routes because they are needed to allow shippers located on the complainants' lines to reach markets in competition with other California producers. Otherwise, where switching service is not available at the origins or destinations, the lowest combination rates are charged over any route permitting interchange with the Southern Pacific in California, or the Great Northern and Northern Pacific or Union Pacific in Oregon, Washington, or Idaho.

On canned goods from McHenry, Calif., to Yakima, Wash., the lowest combination is based on Stockton, and applies only over the Tidewater Southern to Stockton, thence the Southern Pacific to Portland, and the Northern Pacific or the Union Pacific to destination. There are

canners at Yuba City, Calif., on the Sacramento Northern, but that carrier and the Southern Pacific do not interchange traffic thereat. The lowest rates from Yuba City to Walla Walla, Wash., for example, are combinations over Marysville, Calif., using the local rate of the Sacramento Northern to Marysville and the joint rate of the Southern Pacific and the Northern Pacific or the Union Pacific beyond. These rates deprive the complainants of a line-haul although they originate the traffic.

Between points on the Northern Pacific or the Union Pacific and those on the Santa Fe (except in the San Francisco Bay area), joint rates are maintained over routes including the Southern Pacific. Only higher combination rates are available between the same points over the routes sought herein through Bieber. The complainants argue that this denies to the public the advantages of alternate routes and deprives the Western Pacific of an opportunity to participate in the movement of the traffic.

The complainants now have lower combination rates on forest products from Olympia, Shelton, and other points in Washington on the Northern Pacific to San Francisco Bay points, than the joint rates maintained in connection with the Southern Pacific to the same points. However, the complainants fear that this adjustment is temporary, and that this traffic will again be confined to the Southern Pacific by a reduction of the joint rates.

There are joint commodity rates on cast iron pipe, automobiles, and livestock, in addition to joint class rates, from points on the complainants' lines to points on the lines of the defendants over the routes sought. The joint rates on cast iron pipe, from Carpenter, Calif., on the Western Pacific to points in Oregon, Washington, and Idaho on the Northern Pacific or the Union Pacific, were established on June 21, 1952, as the result of a complaint[5]

[5] The complaint was dismissed after the parties advised that they had reached a satisfactory rate adjustment.

filed by the United States Pipe & Foundry Company. These rates are the same as those in effect to the same points from Decoto, Calif., on the Southern Pacific, with interchange at Portland. The Northern Pacific and the Union Pacific receive the same divisions of these rates north of Portland on the traffic through Bieber as they receive from the joint rates maintained in connection with the Southern Pacific. In 1959 and 1960, respectively, 124 and 154 carloads of this pipe moved.

The joint rates on automobiles from Melrose (Oakland), Calif., and Decoto, on the Western Pacific, are the same as the rates from the same points on the Southern Pacific to destinations on the Northern Pacific or the Union Pacific. These rates became effective on October 4, 1959, following the filing of a complaint, which was dismissed at the request of the complainant. The plant for which these rates were published was never built, and thus there have been no movements.

The joint rates on livestock were established as a result of our order in *American National Live Stock Assn.* v. *Atchison, T. & S. F. Ry. Co.*, 122 I.C.C. 609, and subsequent reports. The class rates were established in 1956 following our order in *Class Rates, Mountain-Pacific Territory*, 296 I.C.C. 555. There were no movements of livestock or of class-rated traffic over these routes in 1960.

In addition to the foregoing movements, a total of 19 carloads in 1959 and 11 carloads in 1960, of government and commercial traffic were handled over the routes sought between the considered points. The rates charged are not shown, but it is reasonable to assume that they were on a combination basis.

The Bieber-route movement.—The complainants use the Bieber route in transporting traffic between points in western transcontinental territory. During the 5 years beginning with 1955, this route was responsible for approximately 20 percent of the Western Pacific's total

freight revenues. This territory produced about 50 percent of the freight cars handled by the Western Pacific and 38 percent of its freight revenues. Excluding the joint movements with the Santa Fe, the Western Pacific's revenue per car in 1959 averaged $169.63 northbound and $171.86 southbound over the Bieber route. It estimates that its revenues per car would average about $144 northbound and $146 southbound if competitive rates were established over the routes sought.

More than 50 percent of the cars moving over the Bieber route are between points on the Great Northern and points on the Santa Fe. For the five-year period above mentioned, the annual average was 30,982 cars over the Bieber route and 7,226 over the Southern Pacific route. In 1959, the traffic moving via the Bieber route in connection with the Santa Fe produced for the Western Pacific revenues per car of $126 northbound and $116 southbound. The Western Pacific estimates that its revenues per car would average about $101 northbound and $93 southbound if competitive rates were established over the routes sought in connection with the Santa Fe.

The traffic and rail service here concerned.—The Pacific Northwest and California have, in the last 20 years, increased their population, consumption, and production at a rapid rate, and continued growth is expected. The complainants urge that rail service in this territory must be expanded to meet this economic growth, and that there is need for the competitive routes through Portland. The Portland Freight Traffic Association, made up of various civic bodies and some 150 large shippers in Oregon and Washington, stress that the routes and rates sought by the complainants would materially assist in the greater industrial development of the Pacific Northwest, provide for a greater and more complete competitive rail system, and generally assist in the economic growth of this area.

The Western Pacific has improved its transportation plant to keep pace with the economic growth mentioned,

but it is moving only about 75 percent of the volume handled by it in its heaviest war year, 1945, when the line was not as well maintained as it is today. It is ready, willing, and able to meet any demand for service over the route sought through Bieber. Along its line it has some 30 different areas of about 4,500 acres of potential industrial land. It competes for industrial plants with other carriers in California, and in the absence of joint rates and routes to and from points in Oregon, Idaho, and Washington, it maintains it has had difficulty in attracting industries to its lines. Of the 100 industries which located along its lines in the past three years, 85 are served, through switching arrangements or otherwise, by the Southern Pacific, and 70 of these also by additional railroads. Attempts to locate several new industrial plants along its lines were unsuccessful because of a need for service to points in the Northwest on the Union Pacific, the Northern Pacific, or their connections, and joint rates were not available. In the last 30 years the complainants have been unable to obtain traffic from industries served by these defendants. A survey of 142 such industries indicated that more than 25,000 carloads are moving annually which are not available to the complainants because of the lack of competitive rates. About 2,250 carloads originate or terminate on the lines of the complainants and move to or from points at noncompetitive rates.

The Longview Fibre Company has plants at Longview and Seattle, Wash., Oakland, Los Angeles, and other points. From Longview, except for the single-line route of the Union Pacific to Los Angeles, on shipments to California, it is restricted to routes embracing the Southern Pacific. It urges that the routes sought would make available more empty cars and give rise to faster, more efficient, and more flexible service. However, this shipper may now use five routes to California, consisting of the Union Pacific direct, the Union Pacific to Portland and the Southern Pacific beyond, the Northern Pacific to Portland and the Southern

Pacific beyond, the Great Northern to Portland and the Southern Pacific beyond, and the Great Northern to Bieber and the Western Pacific beyond.

Centennial Mills, Inc., owns and operates flour mills at Spokane and Portland. Its grain is supplied from Washington and Oregon, and moves to Spokane and Portland over the Union Pacific, the Northern Pacific, or the Spokane, Portland & Seattle Railway Company (SP&S). Only limited quantities originate on the Great Northern in Washington for the reason that few grain elevators are located along that road. This company's flour and millfeed are sold in California at the Portland price, plus a transit balance of 44.5 cents per 100 pounds, based on rates on eastern Washington grain, to northern California, and 52 cents, based on rates on Montana wheat, to southern California. The latter presents no problem to this shipper, since the Montana wheat generally originates on the Great Northern, but at times it secures Great Northern wheat only to find that the transit balance to northern California exceeds 44.5 cents. Also, on shipments to destinations in northern California on the Western Pacific, there is an occasional shortage of Great Northern transit billing from Washington; as a result, this shipper must use the Montana transit billing and absorb the 7.5-cent difference. Centennial desires the routes and rates sought by the complainants, because they would provide greater flexibility to its transit operations and eliminate the 7.5-cent penalty.

The plant of the Pacific Coast Paper Mills, at Bellingham, Wash., is located on the line of the Great Northern, but it is also served by the Northern Pacific through switching arrangements. It prefers to use the Bieber route to California which it has found to be faster. However, it has used the Southern Pacific route because of car shortages on the Great Northern. It feels the Northern Pacific's participation in joint rates through Bieber would increase the number of available cars and eliminate the penalty when

shipping over the Northern Pacific through Bieber. It states also that the routes sought would facilitate delivery.

The Consolidated Dairy Products Company is located at Seattle on the Northern Pacific but is also accessible to the Great Northern through switching arrangements. The switching at Seattle takes 24 hours, but faster service over the Bieber route makes up for this delay. Consolidated believes that the competitive rates and routes through Bieber would eliminate the delay, since the Northern Pacific would move the shipments to Portland; and that they would increase the rail competition between carriers, resulting in better and more flexible rail service. Moreover, the Northern Pacific has provided for storage and repacking-in-transit privileges at Seattle, and Consolidated could ship butter from Ellensburg, Wash., to California points over the routes sought by taking advantage of these transit privileges at the joint rates not now applicable over such routes from and to these points. In 1959 and 1960, this company used the Bieber route for one-third of its shipments to Los Angeles with the balance moving over the Southern Pacific route.

The American Pipe and Construction Company of Portland purchases steel raw materials for fabricating at various points, including Kaiser, Calif., which is served by the Santa Fe and Southern Pacific. Steel purchased at Kaiser and shipped to Portland by the Southern Pacific can be fabricated in transit and then shipped over the Great Northern, the Union Pacific, or the Northern Pacific. The route through Bieber is used in some instances, but then the steel fabricated at Portland must move to points on the Great Northern. This shipper must keep constant check on the inbound movements to Portland in order to know what steel products can be shipped beyond to points on the Union Pacific or the Northern Pacific. It would be to the advantage of this shipper if it were relieved of the present complexities in transit operations brought about by the

failure of these lines to provide competitive routes and rates.

The foregoing is representative of the testimony presented by 15 shippers in the forest products, pulp, grain products, cottonseed meal, paper, paper articles, food, and iron and steel industries. They support the complainants. The defendants stress that these shippers have been aware of the lack of joint rates and through routes through Bieber for the last 31 years and have not submitted a written request to the defendants for relief. However, some verbal requests have been made. In the last six years only one shipper requested the Northern Pacific to establish joint rates through Bieber, and that request was handled to the satisfaction of the shipper.

Operating routes north of Portland.—The SP&S, which owns the Oregon Trunk Railway and the Oregon Electric Railway, is owned and under the common management and control of the Northern Pacific and the Great Northern. As material here, it has a water-grade line north of the Columbia River, extending east and west, between Portland and Spokane through Vancouver, Wishram, and Pasco, Wash., with the north-south line of the Oregon Trunk extending between Bend, Oreg., and Wishram, through Oregon Trunk Junction, Oreg. The SP&S is a party to the joint rates with the Southern Pacific, interchanging at Portland, and is used by the Northern Pacific as an alternate route between Portland and points on the Northern Pacific east of the Cascade Mountains, Yakima, Wash., and east, the interchange between the SP&S and the Northern Pacific being at Pasco or Spokane. This results in more economic and expeditious service than over the longer route of the Northern Pacific through Auburn, Wash., and is requested by some shippers. Unless transit or some other reason requires use of the longer route, traffic brought into Pasco by the Northern Pacific for movement beyond to points in California is turned over to the SP&S.

The Great Northern uses the lines of the Oregon Trunk and SP&S under car-haul contracts, and in transporting over the Bieber route, operates over the lines of these carriers between Bend and its connections with the SP&S at Vancouver, on the west, and Fort Wright Junction (near Spokane), Wash., on the east. Traffic over the routes sought would be handled over the SP&S to Portland.

Under the routes sought, the Northern Pacific would be unable to use the shorter SP&S route between Portland and Pasco. Instead, it would use its more circuitous route through Auburn for movement to points east of the Cascade Mountains. The complainants argue that the defendants could handle the traffic from Portland the same as it is handled over the Southern Pacific route. However, it would not be so routed and would require a backhaul over the SP&S between Wishram and Portland. The route sought over the Northern Pacific from Portland, to Spokane, for example, would require a movement over the SP&S of 106 miles west from Wishram to Portland, and 533 miles over the Northern Pacific through Auburn to Spokane, or 639 miles, whereas from Wishram east over the SP&S to Pasco, thence the Northern Pacific to Spokane, the distance is 271 miles. Thus, the route sought to Spokane on the Northern Pacific is 368 miles longer than over the lines of these carriers east from Wishram to Spokane, and would require crossing the Cascade Mountains at an elevation of 2,837 feet.

The route of the Union Pacific from Portland sought herein to Spokane, for instance, requires a westward movement from Wishram over the SP&S through Vancouver to Portland, thence the Union Pacific in an eastward direction along the south bank of the Columbia River through Oregon Trunk Junction, which is across the river from Wishram. These westward and eastward movements aggregate slightly more than 200 miles.

From San Francisco to Walla Walla, Wash., on the Northern Pacific, the route sought through Bieber and

Portland, thence the Northern Pacific is 1,339 miles, whereas the route of the Southern Pacific to Portland, thence the SP&S to Pasco and the Northern Pacific to Walla Walla is 1,014 miles. The distance using the Southern Pacific to Portland and the Northern Pacific through Auburn and Pasco is 1,170 miles; and through Bieber and Bend, thence the Oregon Trunk, the SP&S to Pasco, and the Northern Pacific to Walla Walla, the haul is 971 miles, or 368 miles shorter than the route sought.

The routes sought to points west of the Cascade Mountains would require a movement from Vancouver to Portland and return to Vancouver, a distance of 20 miles. This distance, although short when compared to the longer distances and out-of-line movements east of the Cascades, represents costly and wasteful transportation to and from Portland, as substantial bridge mileage is involved.

The Portland Transfer.—Cars moving over the routes sought herein (for convenience the northbound movement will be used) from points in California would be interchanged at Portland by the Union Pacific or the Northern Pacific and the Great Northern. The cars would arrive on the tracks of the SP&S; they would be yarded at its Vancouver yard for classification, and those for the Northern Pacific and the Union Pacific would be transferred by the SP&S service to the Northern Pacific Terminal Company's[6] Lake yard. This yard is 8 miles from the Vancouver yard across the Columbia River and Willamette River Bridges. The cars for the Northern Pacific would be interchanged at the Lake yard, and there is no indication that such interchange would differ from that between the Northern Pacific and the Southern Pacific.

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[6] The Northern Pacific Terminal Company is a switching railroad owned jointly by the Union Pacific and the Southern Pacific. However, 25 percent of the Northern Pacific Terminal Company's Lake yard at Portland is owned by the Great Northern and 75 percent by the Northern Pacific.

At the Lake yard, the cars are inspected by the Northern Pacific Terminal Company's mechanical forces, and those for the Union Pacific are transported about 2 miles by the terminal company to its Depot yard, where the cars are given prescribed air tests and then transferred to the Union Pacific. The crews and engines of the latter company move the cars about 2.5 miles over the Steel Bridge[7] spanning the Willamette River to the Union Pacific's Albina yard, where the trains are made up. Thus, between Vancouver and the Albina yard, a car moves about 12.5 miles, and the elapsed time averages 13 hours and 20 minutes. For this movement the cost to the Union Pacific is $3.69 per car, or $3.25 to the terminal company and 44 cents for handling over the Steel Bridge.

Cars moving from points in California over the Southern Pacific route for interchange with the Union Pacific at Portland are delivered to the Southern Pacific's Brooklyn yard in groups arranged in transit for easy transfer to the Union Pacific's Albina yard. These yards are in Portland, about 4.5 miles from each other. The transfers are made by the Southern Pacific's engines and crews in about 45 minutes, and the cars are delivered in time for the Union Pacific's outbound movements. In this transfer, the car moves about 4.5 miles, and the elapsed time averages 3 hours and 20 minutes between arrival at the Brooklyn yard and delivery to the Albina yard. The cost to the Union Pacific for this service is 46.88 cents.

Operating routes south of Portland.—In most instances, the Bieber route between points in California considered herein and Portland is longer, has more interchanges, goes through more engine districts, and has higher rises and more curvature than the Southern Pacific route. From

[7] The Steel Bridge is jointly owned by the Union Pacific and the Southern Pacific. Maintenance and operation of the bridge is supervised by the Union Pacific, but the expense is divided among railroads making use of it on the basis of cars moved over it.

Los Angeles to Portland, for example, the Southern Pacific route (direct) is 1,098 miles long, with one interchange; the Bieber route (Santa Fe—Western Pacific—Great Northern) is 1,313 miles long, with three interchanges. The Southern Pacific route encounters 9 engine districts; the Bieber route 12. These respective routes have total curvatures of 47,613 and 58,722 degrees; respective rises of 12,560 and 14,324 feet; aggregate rises of 27,389 and 32,357 feet; and a maximum rise in 1 mile of 138 and 176 feet. From Stockton to Portland, the same routes are 702 and 788 miles long.

From San Francisco to Portland, different routes are used for carload and less-than-carload traffic. Since joint class rates, which usually apply on less-than-carload traffic, have been established, the latter routes need not be considered. The Southern Pacific route is 801 miles long with one interchange; the Bieber route, using the Western Pacific, is 880 miles long with two interchanges, but in connection with the Santa Fe, it is 866 miles with three interchanges. The Southern Pacific route encounters 8 engine districts, and both Bieber routes encounter one barge movement and 8 engine districts. The Southern Pacific route, and two Bieber routes have total curvatures, respectively, of 38,028, 47,094 and 45,933 degrees; respective rises of 8,165, 8,753, and 8,367 feet; aggregate rises of 19,381, 21,121, and 20,539 feet; and a maximum rise in 1 mile of 131, 133, and 133 feet. The above figures indicate the transportation conditions are more favorable over the Southern Pacific route than over the Bieber route between Portland and points in California.

The Southern Pacific, using western-district costs and Rail Form A, developed out-of-pocket costs over the Bieber route which exceed those over the Southern Pacific route to Portland by 25 percent from Los Angeles and 15 percent from San Francisco. According to the Southern Pacific, these cost data do not take intc consideration differences in such matters as total degrees of curvature, feet

of rise, and total rise, which it is claimed would result in greater differences in favor of its route.

Transit time.—A car moving from Los Angeles to Lewiston, Idaho, over the Southern Pacific to Portland, thence the SP&S to Pasco, and the Northern Pacific beyond, would be in transit approximately from 8 a.m. Monday to 3 a.m. Friday, and over the same route to Walla Walla to 7 a.m Friday. Using the Northern Pacific through Auburn, the time would be about 24 hours longer, and this would be true over the route sought. The fastest route between these points is through Bieber, thence the Oregon Trunk to Wishram, the SP&S to Pasco, and the Northern Pacific beyond, which under favorable conditions would be 24 hours less than over the fastest Southern Pacific route, and 48 hours less than the route sought. From Los Angeles to Seattle, the shortest time over Southern Pacific route in connection with the Union Pacific is 44 hours, which is 26 hours less than over the route sought. From Spokane to Los Angeles using the Union Pacific, the shortest time over the Southern Pacific route would be 55.5 hours, whereas it would require at least 81 hours over the Bieber route.

Short hauling the defendants.—The defendants contend that the establishment of the routes sought would short-haul them in violation of section 15(4) of the act. As shown herein, the SP&S is under the common control and management of the Northern Pacific and Great Northern.[8] The routes which the complainants seek to establish would require the Northern Pacific to exchange traffic with the Great Northern at Portland despite the fact that the SP&S and the Oregon Trunk extend beyond to Bend. The Union Pacific also operates for 246 miles between Portland and Bend, and it connects with the Great Northern at the

[8] We have held that the SP&S must be regarded, for ratemaking purposes, as a part of the Northern Pacific and the Great Northern systems rather than as an independent line. See *Helix Milling Co., Inc.*, v. *Great Northern Ry. Co.*, 287 I.C.C. 77, 78.

latter point. If the routes sought were established, it would be required to interchange traffic with the Great Northern at Portland, which would short-haul it by 246 miles on every movement.

DISCUSSION AND CONCLUSIONS

The complainants rely primarily on the alleged violation of section 3(4) of the act. That section requires equality of treatment between connecting lines, but the equality of treatment is determined by similarity of circumstances and conditions. *Routing, Coal from Origins on Louisville & N. R.*, 313 I.C.C. 752, 758, and proceedings cited therein.[9] The routes sought through Bieber and Portland are longer and involve more difficult operating conditions than the Southern Pacific route, and they require hauls in a general direction opposite to the direct movement.

Equality is required only between connecting lines. The complainants do not physically connect with the defendants at any point along the Bieber route. The connection is made by the Great Northern at Portland. Insofar as rail carriers are concerned, connecting lines are those carriers having direct physical connections or making up a through route. In *Atlantic Coast Line R. Co.* v. *United States*, 284 U.S. 288, the court found that

> There is no warrant for limiting the meaning of 'connecting lines' to those having a direct physical connection with the Clinchfield. The term is commonly used as referring to all the lines making up a through route.

While the court was construing a lease under section 5(2), the Commission had imposed a condition therein similar to the requirement under section 3(4) that carriers shall not

[9] Our action was sustained in *Atlantic Coast Line Railroad Co., et. al.* v. *United States, et. al.*, C.A. 1811, M.D. Ga., April 17, 1962.

discriminate between connecting lines. This definition of connecting lines was later adopted by the court in *Atchison, T. & S. F. Ry. Co.* v. *City of Chicago*, 240 F. (2d) 930, 937, in connection with the application of section 3(4).

According to this view, the complainants would be connecting carriers with the defendants at Portland only if the present routes constitute through routes. The criteria for the determination of whether a through route exists are set out in *Thompson* v. *United States*, 343 U.S. 549, 557, as follows (the quotation is from the Commission's 21st Annual Report to Congress):

> . . . Existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and division of transportation charges, or the use of a proportional rate to or from junction points or basing points. These incidents named are not to be regarded as exclusive of others which may tend to establish a carrier's course of business with respect to through shipments.
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> In short, the test of the existence of a 'through route' is whether the participating carriers hold themselves out as offering through transportation service. Through carriage implies the existence of a through route whatever the form of the rates charged for the through service.

In *Beaman Elevator Co.* v. *Chicago & N. W. Ry. Co.*, 155 I.C.C. 313, the Commission held that proof of one shipment on a through bill of lading over a particular route was not sufficient to show the existence of a through route, because, as noted by the court, in the above-cited case, "* * * one shipment was not representative of the carriers' course of business." In *Denver & R. G. W. R. Co.* v. *Union P. R. Co.*, 351 U.S. 321, the Court held that the evidence before us in *Denver & R. G. W. Co.* v. *Union Pac.*

R. Co., 287 I.C.C. 611 did not compel a finding that through routes were in existence. The evidence indicated, as noted on page 618 of our report, that 55 shipments a year had moved on through bills of lading over the routes sought, as compared with thousands from and to the same points at joint rates over existing routes. The conduct of the major defendant had been to preserve its long haul and keep the route sought closed. It had used the route sought only in compliance with instructions from the shippers or the prior carriers. Thus, we concluded that the 55 shipments over the route sought must be regarded as of an isolated nature and insufficient to show the existence of a through route, since any other holding would constitute an open invitation to any shipper to set aside the provisions of section 15(3) and (4) of the act simply by preliminarily making a shipment or two over the route sought to be opened commercially, a result plainly not intended by the Congress.

In *Chicago, M., St. P. & P. R. Co.* v. *Spokane, P. & S. Ry. Co.*, 300 I.C.C. 453, affirmed in *Chicago, M. St. P. & P. R. C.* v. *United States*, 366 U.S. 745, the record indicated that 513 shipments had moved at joint rates over the route sought, but thousands had moved over other available routes subject to joint rates. The traffic was not solicited nor did it move at the higher combination rates over the route sought. We concluded that, with the exception of the above-mentioned shipments, the route sought was not a through route within the meaning of section 15.

In the instant proceeding, 278 carloads of cast iron pipe moved at joint rates from points on the complainants' lines over routes through Bieber and Portland to points on the defendants' lines in 1959 and 1960. During that time, 30 carloads of government and commercial traffic also moved at combination rates over such routes. However, the defendants have not solicited nor encouraged the movement of traffic over the routes sought, but for more than

30 years have tried to keep those routes commercially closed, except where the few joint rates above mentioned were established. While the complainants have solicited traffic for movement over routes through Bieber and Portland to points on the defendants' lines, those actions do not show a holding out on the part of the defendants to offer through transportation. Thus, the few shipments made at combination rates do not prove the existence of effective through routes. It follows that, except where joint rates now exist, no effective through routes exist between points in California on the lines of the complainants and their connections, and points in the Northwest on the lines of the defendants, through Bieber and Portland. There is, therefore, no basis for a finding that the carriers are connecting lines within the meaning of section 3(4). Even if the complainants were connecting carriers, the evidence of record does not establish the similiarity of circumstances and conditions which justifies equality of treatment.

While the complainants have indicated a willingness to rely alone on the alleged violation of section 3(4), they also allege other violations and request the prescription of through routes and joint rates over the routes sought. Section 1(4) of the act requires, among other things, that the railroads establish reasonable through routes with each other, and just and reasonable rates applicable thereto. Where such routes are not established voluntarily, we have the authority under section 15(3) of the act to prescribe them whenever deemed by us to be necessary or desirable in the public interest. This authority is restricted by section 15(4), which provides that we "shall not * * * require any carrier by railroad * * * to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route * * * ".

As above indicated, there are numerous routes between points in the areas here considered over which joint rates apply. The shippers urge that the rates and routes sought would give them more freedom of choice in the movement of their goods, would improve transportation service, time in transit and car supply, and make available additional transit privileges. Nothing of record, however, indicates that the existing through routes and joint rates are inadequate to meet the needs of the shipping public. In fact the failure of the shipper witnesses to initiate in the last 31 years a determined campaign to persuade the defendants of the necessity of establishing through routes between points on the complainants' lines in California and points on the defendants' lines in the Northwest, is at least some indication of the adequacy of the existing routes. The expression "in the public interest" means more than a mere desire on the part of shippers for something that would merely be convenient or desirable for them. This desire must be weighed against the effect on other carriers and the general public. On the basis of this record, we cannot find that the public interest would be served by requiring the establishment of joint rates and through routes which are substantially slower and costlier than the present routes.

Additionally, the evidence indicates the routes sought would in many instances short-haul other carriers without their consent. In the absence of a showing by the complainants that the present routes maintained by the defendants are unreasonably long or do not provide adequate, efficient, or economical transportation, we are precluded by the provisions in section 15(4) from prescribing through routes.

We find that the failure and refusal of the defendants to establish through routes and joint rates with the complainants through Bieber and Portland, between points in California, on the one hand, and points in Oregon, Washington, and Idaho, on the other, on the same basis as

those published in connection with the Southern Pacific through Portland, is not shown to be unjust or unreasonable, nor to result in discrimination against the complainants in violation of section 3(4) of the act; and that the establishment of through routes and joint rates in connection with the complainants, through Bieber and Portland, is not shown to be necessary or desirable in the public interest.

An order will be entered dismissing the complaint.

COMMISSIONER GOFF concurs in the result.

Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 26th day of July, A. D. 1962.

No. 33679

WESTERN PACIFIC RAILROAD COMPANY, ET AL.

v.

CAMAS PRAIRIE RAILROAD COMPANY, ET AL.

This proceeding being at issue upon complaint on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and said Division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission, division 2.

HAROLD D. McCOY
Secretary.

(SEAL)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 41779 Civil

THE WESTERN PACIFIC RAILROAD COMPANY, ET AL., *Plaintiffs*,

v.

UNITED STATES OF AMERICA, ET AL., *Defendants*.

Order Denying Petition

Before MERRILL, Circuit Judge, and SWEIGERT and ZIRPOLI, District Judges.

ZIRPOLI, District Judge:

This is an action brought under the Judicial Code, Sections 1336, 1398, 2284 and 2321 through 2325 of Title 28, United States Code, to enjoin, annul and set aside a report and order of the Interstate Commerce Commission. The plaintiffs, Western Pacific Railroad and its subsidiaries,[1] claim that the defendants[2] are engaged in discriminatory rate practices at the Portland, Oregon interchange, in violation of Section 3(4) of the Interstate Commerce Act; 49 U.S.C. § 3(4). Section 3(4) provides as follows:

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[1] The Sacramento Northern Railway and the Tidewater Southern Railway Company.

[2] The defendants named in the complaint filed in the Commission action were: The Atchison, Topeka & Santa Fe Railway Company; The Great Northern Railway Company; The Northern Pacific Railway Company; The Union Pacific Company; The Camas Prairie Railroad Company, jointly owned by Northern Pacific and Union Pacific; The Pacific Coast R. R. Co; The Spokane International Railroad Company, a subsidiary of the Union Pacific; and the Washington, Idaho and Montana Railway Company. The Northern Pacific and Union Pacific and their subsidiaries denied the allegations of the complaint. The Great Northern, Pacific Coast, Santa Fe and the Washington, Idaho and Montana answered the complaint with expressions of willingness to establish and maintain the routes and rates sought. The Southern Pacific Company intervened in opposition to the complaint.

"All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III."

Several issues were ruled on by the Commission which are challenged here[3]; but since we agree with the Commis-

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[3] The Commission noted that although plaintiffs had "indicated a willingness to rely alone on the alleged violation of Section 3(4)", they had not withdrawn their Section 1(4) [Title 49 U.S.C. Sec. 1(4)] allegations nor their request for "prescription of through routes", a remedy related to a Section 1(4) rather than a Section 3(4) violation (316 I.C.C. at 810). The Commission ruled on both issues. On the Section 3(4) issue after a lengthy discussion of the law and the facts, the Commission found (316 I.C.C. at 810):

"There is, therefore, no basis for a finding that the carriers are connecting lines within the meaning of section 3(4)." It then went on to say: "Even if the complainants were connecting carriers, the evidence of record does not establish the similarity of circumstances and conditions which justifies equality of treatment." This last quoted issue this Court need not and does not reach. On the section 1(4) issue, which plaintiffs do not now urge, the Commission found (316 I.C.C. at 811): "On the basis of this record, we cannot find that the public interest would be served by requiring the establishment of joint rates and through routes which are substantially slower and costlier than the present route." The Commission ordered plaintiffs' complaint dismissed because (316 I.C.C. 811):

"We find that the failure and refusal of the defendants to establish through routes and joint rates with the complainants through

sion's conclusion that plaintiffs are not a "connecting line" within the meaning of Section 3(4) of the Act, we find it unnecessary to resolve the remaining issues presented by the complaint.

The factual background of this case is as follows: The two routes considered herein are called the Bieber route and the Southern Pacific route. The former was created by an order of the Commission in 1931 and was designed to be a competitor with the Southern Pacific route. See *Great Northern Ry. Co. Construction,* 166 I.C.C. 3, 170 I.C.C. 399. For purposes of this case, the Bieber route consists of the Santa Fe from points in southern California to Stockton, California, thence Western Pacific to Bieber, California, and thence Great Northern to Portland, Oregon. This line extends along the eastern side of northern California through eastern Oregon to Wishram on the Columbia; from Wishram the line runs to Vancouver, Washington and thence to Portland, Oregon. The Southern Pacific route extends from points in southern California by either Santa Fe or Southern Pacific, through the central part of northern California and Central Orgeon to Portland. Southern Pacific and defendants have maintained a system of through routes and rates at the Portland interchange for over 50 years. With the exception of a few commodities, defendants have refused to establish

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Bieber and Portland, between points in California, on the one hand, and points in Oregon,Washington, and Idaho, on the other, on the same basis as those published in connection with the Southern Pacific through Portland, is not shown to be unjust or unreasonable, nor to result in discrimination against the complainants in violation of section 3(4) of the act; and that the establishment of through routes and joint rates in connection with the complainants, through Bieber and Portland, is not shown to be necessary or desirable in the public interest."

Other issues raised in the complaint before this Court, and which this Court need neither reach nor resolve, relate to the evidence, testimony rejected and findings of fact that the Commission is alleged to have either failed to make or erroneously found.

a similar system of through routes and rates with Western Pacific.

A connecting line within the meaning of Section 3(4) is one which has either a direct physical connection at the common interchange or is one which makes up a "through route" through the interchange point. *Atlantic Coast Line R. Co.* v. *United States,* 284 U.S. 288 at 293 (1932). Because Western Pacific terminates at Bieber, California and is therefore the middle link in a three line route, it does not have a direct physical connection with the defendant at Portland, Oregon.

The criteria for the determination of whether a through route exists are set forth in *Thompson* v. *United States,* 343 U.S. 549, 557 as follows:

> "Existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and diversion of transportation charges, or the use of a proportional rate to or from junction points or basing points. These incidents named are not to be regarded as exclusive of others which may tend to establish a carrier's course of business with respect to through shipments.
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> *"In short, the test of the existence of a "through route" is whether the participating carriers hold themselves out as offering through transportation service.* Through carriage implies the existence of a through route whatever the form of the rates charged for the through service." (Emphasis added)

Plaintiff properly concedes that it does not meet the above test[4] because the existence of a few instances of joint

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[4] Plaintiff's opening brief, page 8, states: "There is little doubt that, under the doctrine of the *Thompson* case, supra, there are not, as yet, a full line of through routes over the Bieber route to or from Northern or Union Pacific points."

rates and through routes on some commodities is not sufficient to establish a through route generally. *Chicago M. St. P. & P.R. Co.* v. *Spokane P. & S. Ry. Co.*, 300 I.C.C. 453 (1957), aff'd *Chicago M. St. P. & P.R. Co.* v. *United States*, 366 U.S. 745 (1961); *Denver & R. G. W. R. Co.* v. *Union Pac. R. Co.*, 351 U.S. 321 (1956). Therefore, because plaintiff does not meet the test of the *Atlantic Coast Line* case, it is not a "connecting line" within the meaning of section 3(4).

Plaintiff's reliance on *Chicago, I. & L. Ry.* v. *United States*, 270 U.S. 287 (1926) is misplaced. This case involved reciprocal switching arrangements and presented no question of whether the carriers in that case were "connecting lines" for section 3(4) purposes. Moreover, the case was decided prior to the *Atlantic Coast Line* case. Plaintiff's principal argument is that the definition of a "connecting line" is not limited to the definition of *Atlantic Coast Line*. This Court is satisfied that the present definition fully comports with the statutory purpose, and that any further expansion of the term is not warranted. Because the Supreme Court has not rendered any decision on this question since *Atlantic Coast Line*, this Court is bound to follow that decision. Any further liberalization of the present definition will have to come from the Supreme Court.

IT IS THEREFORE ORDERED that the petition to enjoin, annul and set aside the order of the Commission is denied, and the complaint is dismissed.

Dated: June 19, 1964.

CHARLES M. MERRILL
Circuit Judge

WILLIAM T. SWEIGERT
District Judge

ALFONSO J. ZIRPOLI
District Judge

APPENDIX B

The National Transportation policy, 54 Stat. 899, 49 U.S.C. preceding §§1, 301, 901 and 1001:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act [chapters 1, 8, 12, 13, and 19 of this title], so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act [chapters 1, 8, 12, 13, and 19 of this title] shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 3(4) of the Interstate Commerce Act, 24 Stat. 380, as amended, 49 U.S.C. §3(4):

> Interchange of traffic. All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers

or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water subject to chapter 12 of this title.

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JOHN F. DAVI

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No [redacted] 12

THE WESTERN PACIFIC RAILROAD COMPANY, ET AL.,
Appellants,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

MOTION TO AFFIRM

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November 13, 1964

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 598

THE WESTERN PACIFIC RAILROAD COMPANY, ET AL.,

Appellants,

vs.

UNITED STATES OF AMERICA, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c), of the Revised Rules of this Court, appellees, the Northern Pacific Railway Company, Union Pacific Railroad Company, Southern Pacific Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company,[1] move that the unanimous judgment of the District Court be affirmed on the ground that the question presented is so unsubstantial as not to warrant further argument. The opinion of the District Court is reported at 230 F. Supp. 852 and is reproduced at pages 32a through 36a of the Jurisdictional Statement.

[1] Hereinafter referred to as Northern Pacific, Union Pacific, Southern Pacific, Camas Prairie and Walla Walla, respectively.

STATEMENT

This is a direct appeal from a final judgment filed on June 22, 1964, by a District Court of three judges specially constituted pursuant to 28 U.S.C. §§2284 and 2325 dismissing appellants' complaint which sought to set aside an order of the Interstate Commerce Commission. The Commission's decision is reported at 316 I.C.C. 795 and is reproduced at pages 8a through 31a of the Jurisdictional Statement.

For more than half a century, the Northern Pacific and the Union Pacific have maintained a full line of joint through rates with the Southern Pacific via the Portland gateway between points on their lines in the states of Oregon, Washington and Idaho and points in California.[2] Since 1931 appellant, The Western Pacific Railroad Company,[3] The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) and the Great Northern Railway Company (Great Northern), have maintained joint through rates over routes through Bieber, California, between stations in California and stations in Oregon, Washington and Idaho on the same basis as those maintained by the Northern Pacific and Union Pacific with the Southern Pacific via the Portland gateway.[4] The Western Pacific connects with the Santa Fe at Stockton, California, on the south and with the Great Northern at Bieber, California, on the north. Bieber, California, is 490 miles south of Portland and 244 miles south of Bend, Oregon, which is served by the Oregon Trunk, a wholly-owned subsidiary of the

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[2] Hereinafter referred to as the Southern Pacific route.

[3] The Western Pacific Railroad Company and its subsidiary lines, the Sacramento Northern Railway and the Tidewater Southern Railway Company, are hereinafter referred to as Western Pacific or appellant.

[4] Hereinafter referred to as the Bieber route.

Spokane, Portland and Seattle Railway Company (SP&S),[5] and by the Union Pacific.

In addition to the full line of joint rates available over the two major competitive through routes described above, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company maintains joint rates with the Western Pacific through Bieber. Further, the Union Pacific publishes competitive rates to the Los Angeles area over its single-line route via Salt Lake City and also participates in routes with the Western Pacific and Southern Pacific via Utah and Nevada interchanges. (J.S. app. 10a, 11a).[6]

In its complaint to the Commission filed February 10, 1961, appellant alleged that the Northern Pacific, Union Pacific, Great Northern, Santa Fe and their short-line connections had violated both Sections 1(4)[7] and 3(4) of the Interstate Commerce Act, 49 U.S.C. §§1(4), 3(4), and sought an affirmative order requiring the establishment of through routes and joint rates through Bieber, California, via the Portland gateway between stations in California and stations

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[5] The SP&S is under the common control and management of the Northern Pacific and Great Northern. See *Chicago, M., St. P. & P. R. Co. v. Spokane, P. & S. Ry. Co.*, 300 I.C.C. 453, aff'd 182 F. Supp. 81, 366 U.S. 745 (1961).

[6] The Northern Pacific and Union Pacific maintain a few joint rates with the Western Pacific via the sought routes; however, the Commission found, and Western Pacific concedes, that through routes do not exist. See *Thompson v. United States*, 343 U.S. 549, 557 (1952).

[7] 49 U.S.C. §1(4) requires railroads, *inter alia*, to "establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto;" and "to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, * * *"

on the Northern Pacific and Union Pacific and their short-line connections in Oregon, Washington and Idaho. The Northern Pacific and Union Pacific denied the allegations and, together with the intervening Southern Pacific, opposed the complaint. The Great Northern and Santa Fe, while indicating a willingness to establish the routes and rates sought, did not submit any evidence and did not brief or argue the case. Following the issuance of an Examiner's proposed report, Division 2 of the Commission found that the public interest did not require the establishment of the sought through routes and joint rates under Sections 1(4) and 15(3) of the Interstate Commerce Act, 49 U.S.C. §§1(4), 15(3),[8] and that the sought routes would, in many instances, short-haul the Northern Pacific and the Union Pacific without their consent, in violation of Section 15(4) of the Interstate Commerce Act, 49 U.S.C. §15(4).[9] (J.S. app. 30a). In addition, the Division found that the Western Pacific is not a "connecting line" of the Northern Pacific and the Union Pacific within the meaning of Section 3(4) of the Interstate Commerce Act, 49 U.S.C. §3(4), and that, further, even if it were a connecting line, the evidence of record did not establish the necessary similarity of circumstances and con-

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[8] 49 U.S.C. §15(3) authorizes the Commission, after full hearing, to establish, *inter alia*, such through routes, joint classifications and joint rates, applicable to the transportation of property by railroad as it finds "necessary or desirable in the public interest" together with the terms and conditions under which such through routes shall be operated.

[9] 49 U.S.C. §15(4) restricts the power of the Commission under paragraph (3) of the same section to require a railroad, without its consent, to embrace less than its entire length, subject to certain exceptions; namely, (a) the through route would be "unreasonably long" or (b) the through route is needed "to provide adequate, and more efficient or more economic, transportation: * * *"

ditions which would justify equality of treatment at the Portland gateway. (J.S. app. 29a).

Following the denial of its petition for reconsideration by Division 2 of the Commission acting as an appellate division, the Western Pacific, in a further petition for reconsideration by the entire Commission, finally abandoned its Section 1(4) allegation, 49 U.S.C. §1(4), and has since relied solely on Section 3(4) of the Interstate Commerce Act, 49 U.S.C. §3(4). The Commission's order became final with its denial on July 12, 1963, of Western Pacific's petition for further hearing and reconsideration.

Appellant then brought this action in the United States District Court for the Northern District of California seeking to have the Commission's order set aside, contending, *inter alia*, that the Western Pacific was a connecting line of the appellees Northern Pacific and Union Pacific at Portland within the meaning of Section 3(4) of the Interstate Commerce Act, 49 U.S.C. §3(4), and that the evidence of record established the necessary similarity of circumstances and conditions sufficient to require equality of treatment at the Portland gateway. The District Court dismissed the complaint holding that the Commission had properly determined that the Western Pacific is not a "connecting line" within the meaning of Section 3(4) of the Interstate Commerce Act, 49 U.S.C. §3(4). The Court did not consider it necessary to decide whether the Commission had erred in its finding that the record did not establish the necessary similarity of circumstances and conditions which would justify equality of treatment at the Portland gateway or to resolve the other issues raised by the Western Pacific. (J.S. app. 33a, 34a).

ARGUMENT

The jurisdictional statement presents a single question, namely, whether the entire Commission and a unanimous District Court have properly construed Section 3(4) of the Interstate Commerce Act,[10] 49 U.S.C. §3(4), in holding that the Western Pacific is not a connecting line of the Northern Pacific and Union Pacific at the Portland gateway.

Western Pacific's lines do not extend north of Bieber, California, which is 490 miles south of Portland, Oregon. Moreover, Western Pacific, admittedly, does not participate in through routes with the Northern Pacific and Union Pacific. Patently, therefore, Western Pacific does not meet the requirement that a connecting line "is one which has either a direct physical connection at the common interchange or is one which makes up a 'through route' through the interchange point." (J.S. app. 35a).

The Commission's finding that the instant proceeding presented a question of "general transportation importance" obviously does not establish that the issue here present is substantial. This finding simply permitted appellant to file successive petitions for reconsideration.[11] The first petition was fully considered by Division 2 acting as an appellate division and denied on January 18, 1963. The second petition

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[10] Hereinafter referred to as Act.

[11] The Commission's General Rules of Practice provide that the right to apply to the entire Commission for reconsideration of a decision or order of a division of the Commission is restricted to those proceedings in which the entire Commission determines that an issue of general transportation importance is involved. In the absence of such a finding, petitions for reconsideration are considered by the division involved acting in its appellate capacity. §1.101(3)

was considered by the entire Commission and denied by order dated July 12, 1963. Such a finding indicates the careful and thorough consideration which this complaint has received before the Commission, rather than the importance of the question here presented.

Appellant further states that the United States recognized its importance "by entering the case before the Commission, * * *" (J.S. 7). While the United States did attempt to intervene in this proceeding before the Commission for the purpose of seeking reconsideration of the report and order of Division 2 on July 26, 1963, two weeks subsequent to the order of the entire Commission denying reconsideration and four days before it was served, and again on August 7, 1963,[12] it filed a completely neutral answer before the District Court on December 16, 1963.

In support of this same theme, appellant erroneously asserts that the District Court "virtually invited this Court to review its decision." (J.S. 8). The decision, of course, speaks for itself; however, we are constrained to quote the following sentence from the concluding paragraph of the Court's opinion:

> "This Court is satisfied that the present definition (of connecting line) fully comports with the statutory purpose, and that any further expansion of the term is not warranted." (J.S. app. 36a)

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[12] Appellant inadvertently stated in its Jurisdictional Statement p. 7, Footnote 6, that the United States filed three petitions. The United States filed two petitions—one for reconsideration of the order of Division 2 on July 26, 1963, and the second on August 7, 1963, to set aside the order of the entire Commission served July 30, 1964. The first petition was, of necessity, accompanied by a petition in intervention.

Appellant argues variously that establishment of the routes and rates sought will generally assist in the economic growth of the area (J.S. 8); that in this "age of merger" the Bieber route concept should be preserved (J.S. 8, 9); that the existing situation results in uneconomical and wasteful transportation (J.S. 16); that intramodal competition should be enhanced (J.S. 17), and that the interpretation of Section 3(4) of the Act it seeks will provide an answer to the revolutionary transformation now taking place in the railroad industry (J. S. 17). Assuming, *arguendo*, that these assertions are valid, none is relevant. The Commission's order will in no way impede the existing operation of the Bieber route. Moreover, the Commission found that because of the circuity involved, the Western Pacific's proposed new routes would be "substantially slower and costlier than the present routes" (J.S. app. 30a). Finally, the Commission found that the establishment of the requested through routes and joint rates under Sections 1(4) and 15(3) of the Act, 49 U.S.C. §§1(4) and 15(3), was "not shown to be necessary or desirable in the public interest." (J.S. app. 31a). The Western Pacific has not challenged this finding.

As appellant points out, the term "connecting lines" in Section 3(4) of the Act had its genesis in Section 3(2) of the Original Act to Regulate Commerce, 24 Stat. 380, and, despite amendments to the section, the term has not been altered since 1887. (J.S. 9). In appraising appellant's merger argument, it should be noted that the present merger trend is not comparable either in numbers or in total mileage to the mergers and consolidations which occurred during the last two decades of

the Nineteenth Century.[13] Furthermore, in that period we had more small railroads than we do today.[14] Manifestly, as the number of railroad companies decrease and as their size increases, there is less need for expanding the definition of the term "connecting line." Finally, since 1920 the Commission has had plenary jurisdiction over all railroad mergers and consolidations pursuant to Section 5(2) of the Act, 49 U.S.C. §5(2), and it can, and does, impose whatever conditions are necessary to preserve all existing routes and gateways, 41 Stat. 480, et seq.[15]

Further, the case of *St. Louis S. W. Ry. Co. v. United States,* 245 U.S. 136 (1917), is not relevant because it involved an order establishing a reduced joint through rate in lieu of a higher combination rate over existing through routes

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[13] 1 Scharfman, "The Interstate Commerce Commission," pp. 33, 34 (1947). During the nine-year period, 1880 through 1888, a total of 425 railway companies were consolidated or merged with other companies (Third Annual Report of the Interstate Commerce Commission 77, et seq. (1889)); the "most noticeable and important feature of the railway situation" is the trend toward mergers and consolidations (Thirteenth Annual Report of the Interstate Commerce Commission 6 (1899)); during the 16-month period ending November 1, 1900, more than one-eighth of all the railroad mileage in the country was brought under the control of other lines (Fourteenth Annual Report of the Interstate Commerce Commission 11 (1900)).

[14] In 1886, 700 separate systems controlled 1425 railroad companies (First Annual Report of the Interstate Commerce Commission 1 (1887)), while in 1963, there were only 102 Class I Railroads in the United States, some of which were under common management and control (77th Annual Report of the Interstate Commerce Commission 236 (1963)).

[15] 49 U.S.C. §5(2)(b) authorizes the Commission to enter an order approving a consolidation or merger "upon the terms and conditions, and with the modifications, so found to be just and reasonable * * *"

pursuant to Section 15 of the Act, 49 U.S.C. §15. The order did not establish any through routes because they were already in existence, nor did it have its origin in Section 3 of the Act, 49 U.S.C. §3.

Turning now to the principal question raised in this appeal, Western Pacific, in support of its erroneous contention that neither a direct physical connection nor a through route is required to establish connecting-line status under Section 3(4) of the Act, relies solely on *Chicago, I & L. Ry. v. United States*, 270 U.S. 287 (1926).[16] This case involved simply a request of the South Shore for reciprocal switching arrangements at Michigan City, Indiana; rates were not involved. The three defendants asserted that a difference in transportation circumstances and conditions existed because the only carrier with whom the South Shore enjoyed reciprocal switching arrangements, namely, the Lake Erie & Western, had to switch the South Shore's cars from 1.38 miles to 3.88 miles to the defendants' lines. The Commission properly held that the defendants' refusal to switch plaintiff's cars while switching the traffic of all other lines established a violation of Section 3 of the Act. This Court affirmed, holding that if discrimination exists, the order removing it may extend to every carrier that participates in inflicting the injury. Connecting-line status was neither raised by the parties nor considered by the Commission or the Court. The case has never been cited for the point relied on by the appellants. Finally, Mr. Justice Brandeis wrote this opinion as well as the

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[16] This case arose under the Transportation Act of 1920 which, unlike the present Act, required "All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, * * *" (41 Stat. 479)

opinion six years later in the *Atlantic Coast Line* case, *infra*, on which the Commission and the District Court relied.

In *Atlantic Coast Line R. Co. v. United States*, 284 U.S. 288 (1932),[17] the Court was interpreting the meaning of the term "connecting line" as employed by the Commission in *Clinchfield Railway Lease*, 90 I.C.C. 113 (1924), which required, *inter alia*, in Condition 4 that the lessees "shall not discriminate as to rates, fares, and charges" against carriers then connecting or thereafter connecting with the Clinchfield. The Court held that the Georgia & Florida was a connecting line of the Clinchfield within the meaning of the term as used in Condition 4 because the Clinchfield via the Piedmont & Northern Railway Company, an intermediate carrier, voluntarily participated in through routes and joint rates with the Georgia & Florida. The Court expressedly approved the Commission's definition of "connecting lines" as embracing those lines connecting directly or making up a through route.[18]

Appellant erroneously asserts that a "through route" exists in the instant case in the sense in which the term is used in the *Atlantic Coast Line* case, *supra*. (J.S. 13). In the case at bar, Northern Pacific and Union Pacific, unlike the Clinchfield, do not voluntarily participate in through routes and rates with appellant either directly or through any intermediate carriers. Manifestly, participation by the Western Pacific in a through route with the Santa Fe and Great

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[17] This Court's definition of a "connecting line" in the *Atlantic Coast Line* case was applied specifically with reference to Section 3(4) in *Atchison, Topeka & Santa Fe Ry. Co. v. City of Chicago*, 240 F. 2d 930, 937 (7th Cir.), aff'd 357 U.S. 77 (1958).

[18] *Restriction in Routing Between Greenwood and Augusta*, 165 I.C.C. 3, 15 (1930).

Northern does not establish a through route or connecting-line status with the Northern Pacific or Union Pacific.

Appellant contends that the District Court improperly applied the test prescribed by this Court in *Thompson v. United States*, 343 U.S. 549 (1952), in determining whether a "through route" presently exists. Appellant apparently conceded that the definition of the term "through route" enunciated by this Court in the *Thompson* case, *supra*, is entirely proper for Section 15(4), 49 U.S.C. §15(4), but would have the Court adopt a different definition for the same term if Section 3(4) of the Act is involved. The statutory term "through route" is used throughout the Interstate Commerce Act, as this Court recognized in the *Thompson* case, *supra*.[19] The definition prescribed obviously was not intended to vary depending upon which section of the Act was involved. The same definition of the term "through route" was also applied by this Court in *U. S. v. Great Northern R. Co.*, 343 U.S. 562 (1952), and *Denver & R. G. W. R. Co. v. Union P. R. Co.*, 351 U.S. 321 (1956). Under this test a through route is established by the holding out of two or more carriers to provide through transportation service. The Western Pacific admits that it does not participate in through routes with the Northern Pacific and the Union Pacific. Manifestly, the test was properly applied by the District Court in the instant proceeding.

Appellant erroneously contends that it has a direct physical connection with the Northern Pacific and Union Pacific at the Portland gateway because it constitutes "the essential middle link of the Bieber route, * * *" (J.S. 15, et seq.). This is simply contrary to fact, as the Commission

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[19] 49 U.S.C. §§1(4), 5a(4), 5b(4), 6(1), 15(3), 15(4) and 15(8).

found when it held that the Western Pacific did not have a direct physical connection with the lines of the Northern Pacific or Union Pacific at Portland or any other point on the Bieber route. (J.S. app. 10a, 26a).

Appellant, in essence, asserts that Section 3(4) of the Act, 49 U.S.C. §3(4), can be utilized to prevent discrimination against a route as distinguished from a connecting line. Appellant has simply failed to properly distinguish between Section 1(4) and paragraphs (1) and (4) of Section 3 of the Act. The duties prescribed by Section 3(4) of the Act extend to connecting lines and not routes. As the Commission stated in *Nicholson Universal S. S. Co. v. Pennsylvania R. Co.*, 203 I.C.C. 637, 647 (1934):

> "Although our power to require the establishment and maintenance of through routes and joint rates has been greatly extended since the enactment of the original Act to Regulate Commerce by section 15(3) and section 6(13) of the present act, *the wording of section 3(3)* [now 3(4)] *has remained substantially the same and does not include within its terms any reference to routes.* * * * (Emphasis supplied.)

If Western Pacific's contention that it has a direct physical connection with the appellees Northern Pacific and Union Pacific at Portland is valid, then every other railroad in the United States, irrespective of where it is situated, also has a direct physical connection with the Northern Pacific and Union Pacific at Portland. Such a construction would permit any railroad to invoke Section 3(4) of the Act, regardless of the need for the establishment of additional routes under Sections 1(4) and 15(3) as limited by Section 15(4) of the Act, simply by asserting that it physically connects with other lines which ultimately connect with the carrier with whom the through routes and joint rates are sought at some

distant gateway; consequently, the failure of the line charged to enter into joint through rates with the complaining line constitutes a violation of Section 3(4) of the Act.

Further, such a construction would result in direct conflict between paragraphs (4) and (1) of Section 3 of the Act, 49 U.S.C. §3(1),(4). Paragraph (1) of Section 3 cannot be invoked by another carrier because of the proviso which makes the section inapplicable to the traffic of any other carrier.[20] This limitation would be meaningless if the term "connecting lines," the subject matter of paragraph (4), is construed to embrace lines which neither physically connect nor presently make up through routes. The construction urged by appellant ignores both the adjective "connecting" and the proviso in paragraph (1) of Section 3 which was added by the Transportation Act of 1940, 54 Stat. 902.

Appellant contends that the Court's construction of Section 3(4) of the Act, 49 U.S.C. §3(4), results in a complete anomoly. (J.S. 14). We submit that when this section is considered in the light of Sections 1(4) and 15(3) of the Act, it is entirely consistent with the legislative pattern. Initially, carriers were under no statutory obligation to maintain through routes and joint rates. No power existed, either at common law or under the original Act, to compel a railroad engaged in interstate commerce to enter into a contract with another carrier for joint through routes and rates. *Little Rock & M. R. Co. v. St. Louis, I. M. & S. Ry. Co.*, 41 F. 559, appeal dismissed 149 U.S. 779 (1893), and *Chicago & N. W. Ry. Co. v. Osborne*, 146 U.S. 354 (1892). This obligation was first prescribed by the

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[20] 49 U.S.C. §1 concludes: "Provided, however, that this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

Hepburn Act of June 29, 1906, which imposed a duty on all carriers to establish through routes and joint rates and authorized the Commission to establish through routes "provided no reasonable or satisfactory through route exists," 34 Stat. 589. The Mann- Elkins Act of June 18, 1910, greatly expanded the Commission's power by authorizing it to establish alternate through routes subject to certain necessary safeguards, 36 Stat. 551. Thus, if a through route is established, either by voluntary action of the carriers involved or Commission order, the provisions of Section 3(4) of the Act apply, notwithstanding the absence of a direct physical connection at a common interchange. However, until a through route is established, a carrier which lacks a direct physical connection at a common interchange must rely on Sections 1(4) and 15(3) of the Act to establish a through route before it can invoke the provisions of Section 3(4) of the Act.

In essence, the Western Pacific is attempting to accomplish indirectly under Section 3(4) of the Act that which it, admittedly, cannot do directly under Sections 1(4) and 15(3) of the Act, namely, establish new through routes and joint rates. The Western Pacific in abandoning before the Commission its claim under Sections 1(4) and 15(3) of the Act conceded that the Commission properly refused to order the establishment of additional through routes pursuant to such sections.

The construction of the term "connecting lines" urged by appellant is subject to the same infirmity as the construction of the term "through routes" which the Commission adopted in the proceeding under review in the *Thompson* case, 343 U.S. 549,[21] namely, that a through route exists if the neces-

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[21] *Omaha Grain Exc. of Omaha, Nebr. v. Missouri Pac. R. Co.*, 278 I.C.C. 519 (1950).

sary physical connection and rates are present to handle a movement. This Court, in rejecting such a construction in *Thompson, supra,* stated:

> *"In short, acceptance of the Commission's argument would mean that the acts of Congress since 1906 granting the Commission only a carefully restricted power to establish through routes have been unnecessary surplusage."* (pp. 559, 560) (Emphasis supplied.)

We submit that there is no escape from the proposition that if the construction of the term "connecting lines," in Section 3(4) of the Act, 49 U.S.C. §3(4), urged by the appellant, were adopted, the term, of necessity, would embrace every railroad in this nation and, perforce, would make every railroad, regardless of where situated, the connecting line of every other raliroad. Complete nullification of the qualifying adjective "connecting" would result. Appellant's refusal to define the term "connecting lines" in its jurisdictional statement is mute proof of the validity of this statement.

CONCLUSION

Since this appeal presents no issue of substance warranting plenary consideration, the judgment of the District Court should be affirmed.

Respectfully submitted,

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November 13, 1964

PROOF OF SERVICE

I, FRANK S. FARRELL, Attorney for these Appellees and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 13th day of November, 1964, I served copies of the foregoing Motion to Affirm on the several parties as follows:

1. On the United States by mailing a copy, properly addressed, with air mail postage prepaid to each of the following: Archibald Cox, Esq., The Solicitor General; William H. Orrick, Jr., Esq., Assistant Attorney General; Arthur J. Murphy, Jr., Esq., Attorney, Department of Justice, Washington 25, D. C., and Cecil F. Poole, Esq., United States Attorney, San Francisco, California.

2. On the Interstate Commerce Commission by mailing a copy, properly addressed, with air mail postage prepaid to each of the following: Robert W. Ginnane, Esq., General Counsel, and Robert S. Burk, Esq., Attorney, Interstate Commerce Commission, Washington 25, D. C.

3. On The Western Pacific Railroad Company, Sacramento Northern Railway Company and Tidewater Southern Railway Company, Appellants, by mailing a copy, properly addressed, with air mail postage prepaid to each of the following: E. L. Van Dellen, Esq., and Walter G. Treanor, Esq., 526 Mission Street, San Francisco 5, California, and E. Barrett Prettyman, Jr., Esq., 800 Colorado Building, Washington 5, D. C.

FRANK S. FARRELL

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 598

THE WESTERN PACIFIC RAILROAD COMPANY, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

MEMORANDUM FOR THE UNITED STATES

As noted in the Jurisdictional Statement filed by the appellants, the United States supported the appellants in the proceeding which they instituted before the Interstate Commerce Commission. When appellants subsequently brought suit before the three-judge district court challenging the Commission's denial of relief, the United States was named as the statutory defendant pursuant to 28 U.S.C. 2322. The United States did not, however, join with the Commission in defense of the latter's order.

We agree with appellants, essentially for the reasons set forth in their Jurisdictional Statement, that the issue presented by this case, whatever its correct

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resolution, is substantial both in terms of its economic implications and from the standpoint of transportation law. That issue, we believe, has not been authoritatively decided. Although the district court relied upon a decision of this Court, *Atlantic Coast Line R. Co.* v. *United States,* 284 U.S. 288, it seems to us quite doubtful whether *Atlantic Coast Line* lends any support for the result.[1] Even if it did, however, we would regard the point as one warranting plenary

[1] The court below cited *Atlantic Coast Line* for the proposition that a "connecting line within the meaning of Section 3(4) is one which has either a direct physical connection at the common interchange or is one which makes up a 'through route' through the interchange point" (J.S., p. 35a). It then reasoned that appellant Western Pacific does not provide a through route via Portland. This is true in the sense that the route is not commercially open (see *Thompson* v. *United States,* 343 U.S. 549), the northern carriers having declined (with minor exceptions relating to specified commodities) to establish joint rates with Western Pacific. However, a careful examination of *Atlantic Coast Line* suggests that the Court was speaking of a "through route" in the not unfamiliar sense of one that is physically available for the performance of a through service, the matter of competitive rates apart. In that sense, of course, Western Pacific is part of an existing through route via Portland.

examination in the important context in which it is here presented.[2]

Accordingly, we urge that probable jurisdiction should be noted.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

NOVEMBER 1964.

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[2] If this case involves discrimination within the meaning of Section 3(4), 49 U.S.C. 3(4), as urged by appellants, it would plainly become the Commission's duty to order its elimination. *Chicago I. & L. Ry.* v. *United States*, 270 U.S. 287, 292. In that event, it is no answer that the Commission has the independent power to order the establishment of through routes and joint rates "whenever deemed by it to be necessary or desirable in the public interest" (Section 15(3), 49 U.S.C. 15(3)). *Ibid.* We note that the Commission's powers under Section 15(3) may be exercised when there is only one connecting line involved and hence no question of discrimination as between connecting lines.

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 598

THE WESTERN PACIFIC RAILROAD COMPANY, ET. AL., APPELLANTS

v.

UNITED STATES OF AMERICA, ET AL., APPELLEES

On Appeal from the United States District Court for the Northern District of California, Southern Division

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MOTION TO AFFIRM

Pursuant to paragraph 1(c) of Rule 16 of the Revised Rules of this Court, the Interstate Commerce Commission moves that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from a judgment (J.S. 36a) of a three-judge district court dismissing appellants' [1]

[1] The Western Pacific Railroad Company and its short line subsidiaries.

suit to set aside an order of the Interstate Commerce Commission. The order of the Commission (J.S. 31a), entered in *Western Pacific R. Co.* v. *Camas Prairie R. Co.*, 316 I.C.C. 795, dismissed Western Pacific's complaint against the failure and refusal of the Northern Pacific Railway Company and Union Pacific Railroad Company [2] to establish through routes and joint rates with Western Pacific through Portland, Oregon, on traffic moving between points in California, on the one hand, and points in Oregon, Washington, and Idaho, on the other. Western Pacific alleged that the failure to establish such through routes and joint rates, on the same basis as such routes and rates are maintained in connection with the Southern Pacific through Portland, is unjust and unreasonable in violation of 49 U.S.C. § 1(4) and discriminatory in violation of 49 U.S.C. § 3(4).

The Southern Pacific Company maintains a line running, in general, from the Los Angeles area north through the San Francisco Bay area to Portland, where it connects with the lines of the Northern Pacific, Union Pacific and Great Northern which extend north and east in Oregon, Washington and Idaho. Through routes and joint rates between California points and points in the Oregon-Washington-Idaho area have been maintained by these carriers via Portland for over 50 years. For over 30 years, competition with this Southern Pacific route has been

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[2] Although the complaint ran against other railroads (See J.S. 8a, note 2), the Northern Pacific and Union Pacific were the principal defendants.

supplied by the so-called Bieber route. The Bieber route consists, in general, of through routes and joint rates over the Atchison, Topeka and Santa Fe's line from the Los Angeles area north to the San Francisco Bay area; then the Western Pacific's line north to Bieber, California; then the Great Northern's line north to Wishram, Washington, and on to destination—either west through Vancouver and Portland or east through Pasco and Spokane, Washington.[3] Thus the Western Pacific and Great Northern, through their participation in the Bieber route, are strong competitors of the carriers participating in the Southern Pacific route. The Northern Pacific and Union Pacific, which connect with the Great Northern at Portland, and, therefore, could enter into through routes and joint rates via Portland with the carrier members of the competing Bieber route, have (with isolated and minor exceptions) steadfastly attempted to keep such routes commercially closed from the inception of the Bieber route over 30 years ago.

Western Pacific's complaint proceeded to hearing before an examiner of the Commission on both the Section 1(4) and 3(4) issues.[4] In his report and recommended order, the examiner took the position that he need not reach the Section 1(4) issue of whether the Commission should order the establishment of

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[3] See map facing J.S. 4. For detailed statements of these routes and rates see J.S. 9a-12a, and 20a-21a.

[4] Santa Fe and Great Northern answered the complaint with expressions of willingness to establish and maintain the routes and rates sought. Southern Pacific intervened in opposition to the complaint.

through routes via Portland between the Bieber route carriers and Union Pacific and Northern Pacific, because Western Pacific primarily argued, and he found, a Section 3(4) violation (J.S. 6a-7a). His finding of a Section 3(4) discrimination in rates apparently rested on a finding of "connecting line" status for Western Pacific on the basis of a few joint through rates via Portland on specific commodities (J.S. 5a-6a).

On exceptions, the Commission, Division 2, reversed the examiner. The Commission noted that, although Western Pacific then indicated a willingness to rely alone on the alleged violation of Section 3(4), it had not withdrawn its Section 1(4) allegations nor its request for the prescription of through routes, a remedy related to a Section 1(4), rather than a Section 3(4), violation (J.S. 29a). Accordingly, the Commission ruled on both issues.

The Commission found that the record did not support a finding "that the public interest would be served by requiring the establishment of joint rates and through routes which are substantially slower and costlier than the present routes" (J.S. 30a). Therefore, the Commission held that the refusal of the defendant railroads to enter into such through routes and joint rates, with Western Pacific via Bieber and Portland was not a violation of Section 1(4).

On the Section 3(4) issue, the Commission found Western Pacific was not a "connecting carrier" with the defendant carriers at Portland within the meaning of that term as used in Section 3(4) and, there-

fore, was not entitled to here invoke that section (J.S. 29a). This conclusion was reached after a lengthy review of the law and the facts (J.S. 26a-29a). It rests upon the application to the facts of a definition of "connecting lines" employing alternative criteria—*i.e.*, physical connection or business connection. First, Western Pacific does not physically connect with the defendant carriers at Portland since its northern terminus is at Bieber, California, some 490 miles south of Portland (J.S. 10a, 26a). Second, absent physical connection, Western Pacific could still be a "connecting line" if through routes with defendants via Bieber and Portland exist. But the record shows no such through routes exist (J.S. 28a-29a).[5]

Additionally, the Commission found that even if Western Pacific were a connecting line within the meaning of Section 3(4), the evidence of record did not establish the similarity of circumstances and conditions which would justify, and under Section 3(4) require, equality of treatment (J.S. 29a).

In the court below, Western Pacific did not challenge the Commission's finding that the 30 year failure to establish through routes and joint rates with

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[5] This was the point of departure between the examiner's opinion and the Commission's. The examiner concluded joint through rates on a few specified commodities rendered unjustified the refusal to establish joint through rates generally. The Commission, following well-settled precedents, concluded that such limited incidents do not establish through routes generally and, thus, the carriers are not connecting lines. Cf. J.S. 6a-7a and 27a-29a.

Western Pacific via Bieber and Portland was not shown to be unjust or unreasonable under Section 1(4) (J.S. 33a, n.3). Western Pacific only sought review of the Section 3(4) ruling. The three-judge district court unanimously sustained that ruling by confirming the Commission's finding that Western Pacific was not a "connecting line" within the meaning and protection of Section 3(4). (J.S. 36a). The court rejected Western Pacific's arguments that the definition of connecting lines should be extended beyond that employed by the Commission, holding: "This court is satisfied that the present definition fully comports with the statutory purpose, and that any further expansion of the term is not warranted." (J.S. 36a).

ARGUMENT

This case presents no substantial question warranting plenary consideration by this Court:

1. Section 3(4) of the Interstate Commerce Act provides that railroads "shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any [railroad] or any common carrier by water subject to part III." Western Pacific contends that it is a "connecting line" with the Union Pacific and Northern Pacific at Portland within the meaning of Section 3(4), although Western Pacific is 490 miles short of a physical connection with those railroads at Port-

land, and although it does not have a through route business connection with them (in conjunction with the intervening Great Northern) at Portland. Western Pacific rests this contention upon the theory that "connecting lines" as used in Section 3(4) includes the middle links of successive lines of railroads which could form a through route to the point of alleged discrimination. The concept that such a possible "route" is an entity entitled to protection under Section 3(4) is stated by Western Pacific as "that single-route, multi-line, end-to-end operations which provide all of the services of paralleling lines [must] be protected against discriminatory treatment" (J.S. 9). We submit that this novel theory was rejected correctly by Division 2 of the Commission, by a 10 to 1 vote of the entire Commission, and by the unanimous court below.

In 1932 this Court made it clear that a connecting line is one which has either a direct physical connection at the common interchange or is one which makes up a "through route" through the interchange point. *Atlantic Coast R. Co.* v. *United States*, 284 U.S. 288, 293 (1932). The test of the existence of a "through route" was later stated by this Court to be whether the participating carriers hold themselves out as offering through transportation service. *Thompson* v. *United States*, 343 U.S. 549, 557 (1952). Both the Commission and the court below relied upon these definitions (J.S. 26a-27a, 35a-36a).

Nothing in the language or history of Section 3(4) supports a further broadening of the concept of "connecting lines". On its face Section 3(4) refers to

"connecting lines" rather than to possible routes embracing distant carriers. Moreover, Section 3(4) must be read with the through route and rate provisions of Sections 1(4) and 15(3) of the Act.

Section 1(4) requires railroads "to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto." If a railroad refuses to do so, the Commission may require it to do so under the authority of Section 15(3), "whenever deemed by [the Commission] to be necessary or desirable in the public interest." But, the Commission has long recognized that enactment of these statutory provisions in no way changed the common law right[6] of a railroad to refuse to join in a particular through route, a business relationship, so long as that refusal does not violate some law or the through route is not otherwise proven "necessary or desirable in the public interest". *Cf., Routing Restrictions Over Seatrain Lines, Inc.*, 296 I.C.C. 767, 774 (1955).

As compared with the carriers' obligations, and the Commission's authority, inherent in the statutory scheme of Sections 1(4) and 15(3), the pertinent provision of Section 3(4) is much narrower in scope. Section 3(4) does not speak of "routes," but only of "rates." It is specifically limited to "connecting lines" whereas Section 1(4) is not. And, it is specifically

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[6] See, *e.g., A. T. & S. Railroad* v. *D. & N. O. Railroad*, 110 U.S. 667, 685 (1884); *Little Rock & M. R. Co.* v. *St. Louis I. M. & S. Ry. Co.*, 41 F. 559 (E.D. Ark., 1890), appeal dismissed 149 U.S. 779 (1893).

aimed at "discrimination between" such connecting lines as to rates. Thus, it assumes as a condition precedent the existence of the connection (physical or business) which Sections 1(4) and 15(3) aim at establishing.

Appellants originally sought relief under Sections 1(4) and 15(3), as well as 3(4). They failed to prove their Section 1(4) case and abandoned it. Their attempt to expand the definition of connecting lines in Section 3(4) to cover the factual situation here present is clearly a misinterpretation of that section to be a proper tool to force open new through routes with other railroads in the absence of a demonstrated public need for such through routes as required by Sections 1(4) and 15(3). Section 3(4) has no such purpose. Accepting appellants' expanded definition of connecting lines would confer broad powers upon the Commission, never intended by Congress, to order the opening of through routes without regard to the present limitations on such powers in paragraphs (3) and (4) of Section 15. For this reason, as the court below noted (J.S. 36a), the definition of connecting lines given by this Court in *Atlantic Coast Line*, *supra*, and applied here by the Commission, "fully comports with the statutory purpose," whereas appellants' attempt to expand that definition "is not warranted."

In the light of the foregoing, appellants' attempt to distinguish the *Atlantic Coast Line* and *Thompson* cases, and their reliance on other decisions, are meaningless; for it is the compatibility of the definition employed—that of the Commission and the court be-

low or that of appellants—with the statutory scheme which is the real issue here.[7] Even so, the cases discussed by appellants afford them no support.

Despite appellants' assertions (J.S. 12-13), *Atlantic Coast Line R. Co.* v. *United States, supra,* is not distinguishable[8] from this case and does not support appellants, because the "through route" to which the Court referred is not, despite appellants claim (J.S. 13), comparable to the Beiber route south of Portland. Rather, since it included the Clinchfield, it was comparable to the through route *through* Portland which would have here existed, but does not, if the Union Pacific and Northern Pacific had held themselves out (as did the Clinchfield) to participate in such an arrangement with the Beiber route carriers. Because the lessors of the Clinchfield were required by the conditions of the lease to join in through routes and joint rates with all carriers connecting with the Clinchfield, or which might later connect with it, without discrimination, between the territory north and west of the Clinchfield's northern terminus and the southeastern territory beyond its southern terminus, there was the very holding out of through routes with complainant *through the interchange point*

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[7] The failure to recognize this to be the real issue is also apparent in the Memorandum for the United States to this Court.

[8] Appellants attempt to distinguish this case on the basis that the Court was not construing Section 3(4) but, rather, the terms of a lease (J.S. 12). The Commission correctly recognized this to be a distinction without a difference since the principle involved was identical (J.S. 26a).

which is missing here.[9] It was an attempt to cancel that through route, of which the complainant was a part (while continuing a through route with complainant's competitor), which was the issue in *Atlantic Coast Line*. This holding out of a through route through the common point of interchange is what the Court directed its definition of "connecting lines" to and is why that definition does apply here in the way relied upon by the Commission and the court below.

Appellants argue that the definition of a "through route" in the *Thompson* case "has no logical relationship" here (because Thompson was not a Section 3(4) question) and that its use results in a "complete anomoly." (J.S. 14). But, the Court was there defining the term as used "throughout the Interstate Commerce Act" [10] and appellants cite no authority, nor give any logical reason, for use of a different definition in the test of what is a connecting line under Section 3(4). The alleged anomalous result from employing that definition is nothing more than the prevention of appellants' use of Section 3(4) as an unlimited weapon to force open through routes in place of the limited power to do so accorded the Commission in Section 15(3).

Finally, appellants' reliance upon *Chicago, I. & L. Ry. Co.* v. *United States*, 270 U.S. 287 (1926), as "controlling here" (J.S. 11), is misplaced, as the court

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[9] 284 U.S. at 292-3. See the more detailed statement of the lower court, *Atlantic Coast Line R. Co.* v. *United States*, 48 F. 2d 239, 240 (W.D. S.C., 1931).

[10] 343 U.S. at 556.

below found (J.S. 36a). If, as appellants argue (J.S. 12), that decision ever stood for the proposition that (absent physical connection) a through route was unnecessary to establish connecting line status under Section 3(4), it has been replaced by the later *Atlantic Coast Line* decision. But, it has never stood for any such proposition. As the court below noted (J.S. 36a), the *Chicago, I. & L.* case presented no question of connecting line status under Section 3(4) and, moreover, as a reciprocal switching case, it is totally inapplicable here. *Louisville & Nash. R. Co.* v. *United States*, 238 U.S. 1, 18 (1915); *Atlantic Coast Line R. R. Co.* v. *United States*, 205 F. Supp. 360, 365 (M.D. Ga., 1962), *aff'd.* 371 U.S. 6 (1962).

2. We submit that the sole issue involved in this case (at least as resolved by the Commission and the court below) is not of general importance. It involves competitive relationships between railroads—rather than the interests of the shipping public which are protected under other provisions of the Act. So far as we are aware, no other railroad (or water common carrier) has contended that it is a "connecting line" within the meaning of Section 3(4) in the absence of a physical or business connection within the meaning of *Atlantic Coast Line R. Co.* v. *United States, supra.* Certainly, the appellants' vague references to proposed mergers and other developments in the railroad industry (J.S. 8-9, 18) fail to demonstrate that "The importance of this case to the tranportation industry can hardly be overstated" (J.S. 7). Rather, in approving a railroad consolidation under

Section 5(2) of the Act, the Commission has ample power to protect the public interest by imposing conditions for the maintenance of existing routes and the establishment of new routes. *Atlantic Coast Line, supra*; *Canadian Pacific Railway Company* v. *United States*, 158 F. Supp. 248, 254 (D. Minn. 1958); *Seaboard Air Line R. Co.—Merger—Atlantic Coast Line*, 320 I.C.C. 122, 180-188 (1963).

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

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NOVEMBER, 1964

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

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THE WESTERN PACIFIC RAILROAD COMPANY, ET AL.,
Appellants

v.

UNITED STATES OF AMERICA, *Appellee*

On Appeal from the United States District Court for the Northern District of California, Southern Division

BRIEF IN OPPOSITION TO APPELLEES' MOTIONS TO AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 598

THE WESTERN PACIFIC RAILROAD COMPANY, ET AL.,
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On Appeal from the United States District Court for the Northern District of California, Southern Division

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BRIEF IN OPPOSITION TO APPELLEES' MOTIONS TO AFFIRM

Appellants filed their Jurisdictional Statement on October 16, 1964. The United States filed a Memorandum on November 20, 1964, stating that in its judgment this case presents substantial issues and warrants plenary examination by this Court, that it is quite doubtful whether the primary case relied on by the court below supports the result, and that if this case involves discrimination within the meaning of § 3(4), as appellants claim, the case principally relied upon by

appellants requires the elimination of that discrimination. Appellees Union Pacific, Southern Pacific and Northern Pacific (hereinafter referred to as "the railroad appellees") filed a joint Motion to Affirm on November 16, 1964, and appellee Interstate Commerce Commission filed its Motion to Affirm on December 1, 1964 (after having been granted an extension of time by Mr. Justice Douglas). This brief sets forth appellants' opposition to both motions to affirm.

The principal contention of the railroad appellees (RR 13-14)[1] seems to be that if Western Pacific's construction of § 3(4) is correct, "every other railroad in the United States, irrespective of where it is situated, also has a direct physical connection with the Northern Pacific and Union Pacific at Portland" and could invoke § 3(4). The Commission does not make any such claim in its own Motion, probably because it recognizes that several conditions must be met before § 3(4) can be invoked. The carrier making the claim of discrimination must show not only that it enjoys connecting-line status but that another carrier is being favored, that the complaining carrier competes with the favored carrier, that the complainant is being harmed in some fashion by the discrimination, and that a similarity of circumstances and conditions exists between the competing lines.[2] Quite obviously, not all railroads in the country can meet these requirements and thus invoke § 3(4). But as to those carriers which *are* connecting lines, which *do* meet the test of similarity of circumstances

[1] The Motion to Affirm of the railroad appellees is hereinafter referred to as "RR," and that of the Interstate Commerce Commission as "ICC." Western Pacific's Jurisdictional Statement is hereinafter referred to as "JS."

[2] *Routing, Coal from Origins on Louisville & N. R. Co.*, 313 I.C.C. 752, 758 (1961).

and conditions, and which *are* being discriminated against to their detriment, § 3(4) should promptly be made available so that equality of treatment can be achieved. Appellees present no policy or other reason why such discrimination should not be ended. This appeal, then, can hardly be said to present "no issue of substance" (RR 17).

Both the railroad appellees (RR 13-15) and the Commission (ICC 8-11) argue that Western Pacific is attempting to gain indirectly under § 3(4) what it cannot obtain directly under §§ 1(4) and 15(3) of the Act.[3] This is a spurious argument. In the first place, the restrictions in § 15(4) on the Commission's power to establish a through route under § 15(3) are expressly made inapplicable in the event of a § 3 violation. In other words, the Act itself provides that restrictions on the establishment of through routes and joint rates cannot be used to cloak, conceal or protect discriminations. Secondly, this Court has made clear on prior occasions that the elimination of a discrimination is not to be confused with the establishment of through routes or joint rates. As the Court said in *United States* v. *Pennsylvania R. Co.*, 266 U.S. 191, 199 (1924):

> * * * It is true that an extension of trackage rights, an enlarged common use of terminals, or the establishment of through routes and joint rates, or the

[3] The railroad appellees assert additionally (RR 14) that our construction of § 3(4) would result in a conflict between that subsection and § 3(1). There is no such conflict. The two subsections are designed to meet entirely different evils. Section 3(1) affords a remedy to *non-carriers* (shippers, localities, districts, etc.) victimized by undue or unreasonable preferential treatment, whereas § 3(4) is limited to discriminations between "connecting carriers." The question of what is or is not a connecting carrier in no way affects §3(1). It is revealing in this regard that the Commission never once mentions § 3(1) in its own Motion to Affirm.

> withdrawal of any of them, could not be ordered except upon the findings and conditions prescribed in the act. But the order complained of does not require any such thing. It requires only that the carriers shall desist from a practice which involves such use as has resulted and will result in the undue prejudice found. The order leaves them free to remove the discrimination by any appropriate action.

Similarly, in *Louisville & N. R. Co.* v. *United States*, 238 U.S. 1 (1915), a Commission order was attacked on the ground, *inter alia*, that it violated § 15 by compelling certain carriers "to make through routes and joint rates" with another line (*id.* at 18). But the Court replied:

> * * * The Commission did not * * * pass upon the question as to what was a proper switching charge as affected by the rental of the yard and the cost of operation. Neither did it direct the Appellants to establish a joint rate and a through route with the Tennessee Central. Neither did it order the Appellants to give the use of their terminals to the Tennessee Central, but only required them to render to the latter the same service that each of the Appellants furnishes the other in switching cars to industries located in and near the Yard. [*Ibid.*[4].]

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[4] See also *L. T. Barringer & Co.* v. *United States*, 319 U.S. 1, 10-12 (1943); *American Express Co.* v. *South Dakota ex rel. Caldwell*, 244 U.S. 617, 624-625 (1917). The distinction between a discrimination and the establishment of a through route is made again in one of the very cases cited by appellees (RR 14), *Little Rock & M. R. Co.* v. *St. Louis, I. M. & S. Ry. Co.*, 41 Fed. 559 (E.D. Ark. 1890), *appeal dismissed*, 149 U.S. 779 (1893). The plaintiff's line ran from Memphis to Little Rock. The principal defendant's line also ran from Memphis to Little Rock and then south. The plaintiff was attempting to force the defendant to share passenger tickets on the Memphis to Little Rock run, which

If there is a violation of § 3(4), no findings are necessary under §§ 1 or 15, because the discriminating parties are free to eliminate the discrimination in any way they choose.[5] The Commission has not, in such a case, established routes or rates but merely ordered cessation of the illegal practice. To hold otherwise would be to say that discrimination could never be eliminated if the result *might* be the creation of routes or rates which the Commission had not already affirmatively found to be in the public interest and consistent with all sections of the Act.[6] It must be remembered that both the Southern Pacific and Bieber routes are already in existence and competing one with the other; the issue is whether the railroad appellees can continue to discriminate in favor of one and against the other.

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the court would not do. But the court specifically stated, "No discrimination against the traffic carried on by the plaintiff over its own line is claimed" (41 Fed. at 563). Similarly, in *Routing Restrictions Over Seatrain Lines, Inc.*, 296 I.C.C. 767 (1955), also cited by appellees (RR 8), nothing is said that would even inferentially authorize discriminatory treatment, and § 3(4) is not mentioned anywhere in the opinion.

[5] *Atchison, T. & S. F. Ry. Co.* v. *United States*, 194 F. Supp. 438, 444 (D. Kan. 1961); *Arrow Transportation Co.* v. *United States*, 176 *F. Supp.* 411, 420 (N.D. Ala. 1959), *aff'd per curiam sub nom. State Corp. Com'n* v. *Arrow Transportation Co.*, 361 U.S. 353 (1960).

[6] In *American Barge Line Co.* v. *Alabama G. S. R. Co.*, 306 I.C.C. 167, 179 (1959), *relief denied and action dismissed sub nom. Atchison, T. & S. F. Ry. Co.* v. *United States*, 194 F. Supp. 438 (D. Kan. 1961), Commissioner Arpaia argued in dissent that a finding of discrimination requires a concomitant finding that a resulting through route would be in the public interest. The full Commission correctly rejected his contention.

To repeat, §§ 1 and 15—which assume the absence of discrimination—are irrelevant.[7] Western Pacific is seeking only the elimination of discriminations already engaged in by the railroad appellees. Western Pacific has in no way accepted the Commission's findings with respect to issues raised under § 1(4); it has simply chosen to rely wholly upon § 3(4), which it believes fully supports its prayer for relief.

In regard to the term "through route," the railroad appellees assert (RR 12) that Western Pacific "would have the Court adopt a different definition for the same term if Section 3(4) of the Act is involved" than it would for § 15(4). First, the term "through route" does not appear in § 3(4); if the term applies to § 3(4) at all, it applies only because this Court referred to it in *Atlantic Coast Line R. Co.* v. *United States*, 284 U.S. 288, 293 (1932). So we are not speaking here of a legislative term of art specifically used in § 3(4). Secondly, this Court itself has recognized that even in a § 15 case, "through route" is a flexible concept without precise meaning for every situation. *Denver &*

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[7] It is interesting that while the railroad appellees are insistant in this part of their Motion that §§ 3 and 15 are intimately connected and must be similarly interpreted, they are just as insistent elsewhere (RR 9) that *St. Louis S. W. Ry. Co.* v. *United States*, 245 U.S. 136 (1917), is not relevant to this case because it involved § 15 rather than § 3. Also, in urging the relevance of § 15(4), the appellees conveniently ignore the admonition in that subsection that the Commission shall, in prescribing through routes and when consistent with the public interest, "give reasonable preference to the carrier by railroad which originates the traffic." Western Pacific loses each year about 2,500 cars of traffic which either originate or terminate on its line (not to mention an additional 22,500 cars of "bridge" traffic) by virtue of the very discrimination complained of in this case (JS App. A, pp. 4a-5a, 17a).

R. G. W. R. Co. v. *Union Pac. R. Co.*, 351 U.S. 321, 327 (1956) (see JS 14 n.12). Thirdly, there simply has been no occasion for the courts in prior cases to consider the specific situation presented here in relation to a "through route." It is noteworthy, however, that the interpretations in those cases were expanding rather than restrictive or limiting. Fourthly, we agree with the United States in its Memorandum that a careful examination shows *Atlantic Coast Line* to have been speaking of "through route" in the sense of through service physically available, and in that sense, Western Pacific qualifies.[8] And finally, as we have already pointed out (JS 15-16), Western Pacific qualifies even if the "physical connection" test is applied, since Western Pacific is an integral part of a route which does connect with the railroad appellees at Portland.[9]

The railroad appellees (RR 10-11) and the Commission (ICC 11-12) contend that *Chicago, I. & L. Ry.*

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[8] Western Pacific does not concede, as the railroad appellees say it does (RR 3 n.6), that through routes do not exist. We made quite clear in our Jurisdictional Statement (JS 13, 15-16) that a "through route" *does* exist here as that term was applied in *Atlantic Coast Line* and as it should be applied if § 3(4) is correctly interpreted. The only "concession" made by Western Pacific (JS 13) was that no "through route" exists here as that term is interpreted in this case by the Commission and the District Court—an interpretation which we contended is wholly unwarrented.

[9] Western Pacific did not say in its Jurisdictional Statement that it has "a direct physical connection with the Northern Pacific and Union Pacific at the Portland gateway * * *," as the railroad appellants assert (RR 12). Western Pacific said (JS 15) that even if a physical connection were necessary, the Bieber route connects with Northern Pacific and Union Pacific at Portland. The Bieber route must be considered as a whole unit because of the purpose for which it was constructed, and Western Pacific is the middle link and a connecting line within that route. The appellees have not rebutted this argument.

Co. v. *United States*, 270 U.S. 287 (1926), relied on by appellants, involved no question of connecting-line status. That is not so. After a brief introductory argument, the first point presented to this Court by the appellants in that case was entitled, "Unlawful discrimination cannot exist unless there is a physical connection by the carrier alleged to be guilty of the discrimination with the railroad or shipper claiming to be discriminated against, or a service being performed for the railroad or shipper discriminated against through the medium of joint routes or joint rates."[10] The entire argument for thirteen pages of the brief was then devoted to this point,[11] and each of the other parties argued it in detail.[12] To say that connecting-line status was not raised or considered is absurd; it was, in fact, the precise issue to which the Court's opinion was addressed. In addition, *Chicago, I. & L. Ry Co.* could hardly have been overruled by *Atlantic Coast Line* since, as appellees concede (RR 10-11), one Justice wrote both opinions, and he did not even refer to the first opinion in the second one. The two opinions do not conflict but instead lend support to one another.

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[10] Brief for Appellants, *Chicago, I. & L. Ry. Co.* v. *United States*, October Term 1925, No. 150, p. 25.

[11] *Id.* at 25-38. Appellants, for example, made such statements as this: "In this case the persons whom the Commission find are discriminated against are not located upon, or adjacent to the lines of the Pere Marquette, Monon or Michigan Central; they are not serviced in any manner by these lines and these lines do not reach or come in contract with them, and there is no joint arrangement with the Lake Erie and Western for serving them." *Id.* at 38.

[12] Brief for Interstate Commerce Commission, pp. 22-31; Brief for the United States, pp. 13-20; Brief for Appellee, the Chicago, Lake Shore and South Bend Railway Company, pp. 20-31.

This is not to say, as the railroad appellees assert (RR 10), that we rely "solely" upon the *Chicago, I. & L. Ry Co.* case. We also rely on the fact that *no* legislative history (including any cited by appellees) supports the interpretation of § 3(4) which they seek in this case. On the contrary, this Court repeatedly has made clear that § 3 must be liberally interpreted to achieve the primary legislative purpose of eliminating rate discrimination in all its forms.[18] We rely in addition on the fact that *no* decision of *any* court, including this one, specifically precludes the application of § 3(4) to a carrier such as Western Pacific.

We have already answered in our Jurisdictional Statement (JS 8-9, 12-15) most of the contentions made by appellees (RR 10-12; ICC 10-11) about *Atlantic Coast Line R. Co.* v. *United States, supra,* 284 U.S. 288. We need add only two points. First, the complaint in that case was not an attempt, as the Commission asserts, "to cancel a through route * * * " (ICC 11), nor was the Clinchfield already participating in through routes and joint rates with the Georgia & Florida, as the railroad appellees state (RR 11). On the contrary, the Georgia & Florida had built an extension to connect with an intermediate carrier (the Piedmont & Northern), and before the extension was ever opened, Atlantic Coast Line published a tariff that would have prevented joint rates between it and the Georgia & Florida from becoming effective over the extension, with the result that the so-called

[18] *E.g., New York* v. *United States,* 331 U.S. 284, 296 (1947); *Louisville & N. R. Co.* v. *United States,* 282 U.S. 740, 749-750 (1931); *Houston, E. & W. T. Ry. Co.* v. *United States,* 234 U.S. 342, 355-356 (1914); *Kansas City Southern Ry Co.* v. *C. H. Albers Comm'n Co.,* 223 U.S. 573, 597 (1912).

"through route" under appellees' definition never came into being.[14] Secondly, the Commission itself has labeled as erroneous a contention that *Atlantic Coast Line* should be construed to mean that the term "connecting line" can only be applied to lines making up a through route as that term is used in Section 15(4) of the Act. The Commission squarely held, "It is obvious that no such restrictive definition was intended [by the Court]." *Sioux City & N. O. Barge Lines, Inc.* v. *Chicago & N. W. Ry. Co.*, 303 I.C.C. 537, 548 (1958).

The Commission states (ICC 12) that "So far as we are aware, no other railroad (or water carrier) has contended that it is a 'connecting line' within the meaning of Section 3(4) in the absence of a physical or business connection within the meaning of *Atlantic Coast Line R. Co.* v. *United States, supra.*" Yet in 1958, Division 3 held that to require through routes as a condition precedent to a finding of discrimination under § 3(4) would leave that statute unnecessarily limited in scope.[15] The full Commission subsequently held that certain barge lines were "connected" with the defendant rail carriers under § 3(4) even though not physically connected to them,[16] and earlier in the same proceeding, the full Commission had also found that the barge lines enjoyed no arrangement with the defendant rail carriers for continuous carriage of the

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[14] See the *Atlantic Coast Line* opinions of the District Court, 48 F.2d 239, 240-241, 243, 245, and of this Court, 284 U.S. at 291, 294.

[15] *Sioux City & N. O. Barge Lines, Inc.* v. *Chicago & N. W. Ry. Co., supra,* 303 I.C.C. at 547-550.

[16] *American Barge Line Co.* v. *Alabama G. S. R. Co., supra,* 306 I.C.C. at 172.

commodities involved.[17] In these water carrier cases the Commission thus rejected the very proposition that it supports here—namely, that there must be either a physical connection or a holding out of through service. And it did so, we believe, because of this old but still valid and important premise:

> When, therefore, the statute declares that there shall be no discrimination in rates and charges between connecting lines, it can only mean that no difference or distinction shall be made in rates that shall coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business that under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor. Unless this effect is given to the language of the statute it is only a meaningless enactment. [*New York & N. R. Co.* v. *New York & N. E. R. Co.*, 4 I.C.C. 702, 720 (1891).]

No one can deny that Western Pacific and Southern Pacific compete. No one can deny, as the Commission aptly put it (ICC 3), that Northern Pacific and Union Pacific "have (with isolated and minor exceptions) steadfastly attempted to keep such routes commercially closed from the inception of the Bieber route over 30 years ago." No one can deny that the discrimination against Western Pacific is depriving that carrier of traffic and depriving shippers of competitive rates. Surely, then, as the Commission said long ago, the statute is "only a meaningless enactment" unless it is interpreted to do away with such discrimination.

The railroad appellees refer, though only briefly (p. 4), to a finding by Division 2 of the Commission in

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[17] *American Barge Line Co.* v. *Alabama G. S. R. Co.*, 303 I.C.C. 463, 468-471 (1958).

this case that "the sought routes would, in many instances, short-haul the Northern Pacific and the Union Pacific without their consent, in violation of Section 15(4) * * *." The facts are these. Section 15(4), which protects under certain circumstances a railroad's right to retain its longest possible haul, contains four exceptions. One of these is that § 15(4) does not apply when the short-hauled railroad is violating § 3.[18] Not only is the issue of short-hauling improperly injected in connection with proceedings under § 3(4), but the practice presently engaged in by Union Pacific and Northern Pacific of voluntarily short-hauling themselves with Southern Pacific is itself strong evidence that this alleged issue has no substance.[19] Western Pacific is entitled under § 3 to receive the same rate treatment enjoyed by its competitor, Southern Pacific. *Western Pacific is not requesting Union Pacific or Northern Pacific to handle a single carload of traffic one mile less (or more) than they are presently handling comparable traffic with Southern Pacific.* Congress has provided in the § 15(4) exception that under these circumstances, carriers cannot defend against a

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[18] Section 15(4), 49 U.S.C. § 15(4), provides in pertinent part: "in establishing any such through route the Commission shall not (*except as provided in section 3 of this title* * * *) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad * * *" (emphasis added).

[19] For example, Union Pacific joins Southern Pacific in joint rates on Los Angeles traffic and thereby surrenders such traffic at Portland, even though it has its own longer and more satisfactory route all the way to Los Angeles. (Tr. 201, 202, 204-206, 213; Ex. 1, 26, 31.) Through its subsidiary, Oregon Electric, Northern Pacific short-hauls itself by joining in through rates and routes with Southern Pacific at Portland rather than at Eugene, Oregon, directly south of Portland. (Ex. 1, 26, 31.)

charge of discrimination by claiming that the result would be a short haul.[20] The situation is thus comparable to that in *Louisville & N. R. Co.* v. *United States, supra*, 238 U.S. 1, in which the Court carefully pointed out that once a carrier undertakes a course of action, the course must be followed without discrimination to others:

> * * * Having made the Yard a facility for many purposes and to many patrons, such railroad facility is within the provisions of § 3 of the statute which prohibits the facility from being used in such manner as to discriminate against patrons and commodities. * * * Whatever may have been the rights of the carriers in the first instance; whatever may be the case if the Yard was put back under the protection of the proviso to § 3, the Appellants cannot open the Yard for most switching purposes and then debar a particular shipper from a privilege granted the great mass of the public. [*Id.* at 19.]

Union Pacific and Northern Pacific, having already chosen to establish Portland as the common point of interchange with Southern Pacific and the Bieber route, cannot discriminate with impunity against Western Pacific but must instead grant equal treat-

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[20] See *Union Pac. R. Co.* v. *United States*, 132 F. Supp. 72, 80 (D. Neb. 1955), *aff'd in part and rev'd in part sub nom. Denver & R. G. W. R. Co.* v. *Union Pac. R. Co.*, 351 U.S. 321 (1956) ("If the prejudice and preference shown by the evidence falls within the prohibition of Sec. 3(1) the Commission may correct it irrespective of whether the factual situation authorizes the order under Secs. 15(3) and 15(4) heretofore considered"); *Thompson* v. *United States*, 20 F. Supp. 827, 830 (E.D. Mo. 1937); *Missouri Pac. R. Co.* v. *United States*, 16 F. Supp. 752, 756 (E.D. Mo. 1936). In *Atchison, T. & S. F. Ry. Co.* v. *United States*, 279 U.S. 768 (1929), the Court held that the Commission could cancel an unreasonable tariff even though the practical result was to establish a route by which the carrier short-hauled itself.

ment. Section 15(4) is therefore irrelevant to this case, and we think there is an implied concession to this effect in the failure of the railroad appellees to argue the point after referring to it once in their Motion.

The railroad appellees argue that since there are fewer small railroads today than previously (RR 8-9), and since only 7% of the railroad companies in existence 75 years ago are still in existence (RR 9 n.14), "there is less need for expanding the definition of the term 'connecting line.'" Nothing could demonstrate more dramatically than appellees' own figures the contention in our Jurisdictional Statement (JS 8-9, 17-18) that some means must be found in the face of an ever-increasing consolidation of services and facilities to protect the smaller lines, which in many cases offer the sole competition to larger lines. "Connecting-line" status is one answer to the merger trend, because it forbids discrimination that may well put a smaller carrier out of business. Connecting-line status does not guarantee success for the smaller line, but it does guarantee that competition will be governed by true economic forces and not by artificially-imposed and discriminatory restrictions. The figures set forth by appellees graphically prove the necessity for the interpretation of § 3(4) sought by appellants.[21]

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[21] The assertion that the "Commission's order will in no way impede the existing operation of the Bieber route" (RR 8) is not supported by the facts. Manifestly, the failure to order an end to the appellees' discrimination seriously impedes the existing operation of the Bieber route. It is forcing Western Pacific to surrender, except for switch operations, a tremendous volume of traffic which either originates or terminates on its line. It is foreclosing Western Pacific from competing for more than 25,000 carloads of otherwise competitive traffic, all with the result that the route is not being used to anywhere near its actual physical capacity. (JS App. A, p. 17a.) The Examiner specifically held that the higher rates on the Bieber route "precludes" shippers from using that route. (*Id.* at p. 4a.)

Obviously, it is no answer to say that the Commission has the power under § 5(2) to impose conditions to a consolidation (see ICC 12-13). Section 5(2) does not even come into play until a consolidation is voluntarily submitted to the Commission. A current discrimination cannot be defended on the ground that at some future date the Commission may attempt to correct the violation of law in some other proceeding. Moreover, the elimination of parallel facilities now taking place in the railroad industry is coming about not only through consolidations but through the unilateral abandonment of trackage and facilities, and through the adverse competitive impact of discriminatory rates, as in this case. Section 5(2) has no application to these situations.

We strongly support at least one statement in the Commission's brief: "* * * it is the compatibility of the definition employed [of § 3(4)] * * * with the statutory scheme which is the real issue here" (ICC 10). That is indeed the issue. And in facing it, is this Court going to support a restrictive definition of "connecting lines" that would perpetuate the discrimination now being practiced? No statutory language, legislative history, or prior decision requires such a result. We urge, rather, that the Court carry out the intent of Congress by interpreting § 3 so as to outlaw "discrimination in all its forms"[22] and promote the competition that both the Interstate Commerce Act

[22] *Dixie Carriers, Inc.* v. *United States*, 351 U.S. 56, 60 (1956).

and the Bieber route itself were created to protect and enhance.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 12

THE WESTERN PACIFIC RAILROAD, ET AL., *Appellants*

v.

UNITED STATES OF AMERICA, ET AL., *Appellees*

On Appeal from the United States District Court for the Northern District of California, Southern Division

BRIEF FOR APPELLANTS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 12

THE WESTERN PACIFIC RAILROAD, ET AL., *Appellants*

v.

UNITED STATES OF AMERICA, ET AL., *Appellees*

On Appeal from the United States District Court for the Northern District of California, Southern Division

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BRIEF FOR APPELLANTS

OPINIONS AND ORDERS BELOW

The opinion of the United States District Court for the Northern District of California, Southern Division (R. 729-734) is reported at 230 F. Supp. 852. The opinion and order of Division 2, Interstate Commerce Commission (R. 623-646) are reported at 316 I.C.C.

795, and the Commission's order denying further hearing appears at R. 646-647. The Recommended Report and Order of the Hearing Examiner appears at R. 649-655.

JURISDICTION

This suit was brought under 28 U.S.C. §§ 1336, 1398, 2284, 2321-25, and 5 U.S.C. § 1009 to enjoin, set aside and annul a report and order of the Interstate Commerce Commission. The decision of the three-judge District Court (R. 729-734) was dated June 19, 1964, and filed June 22, 1964. Notice of appeal was filed in that court by appellants here on August 17, 1964. R. 735-739. This Court noted probable jurisdiction on January 18, 1965. R. 742; 379 U.S. 956.

The jurisdiction of this Court to review the decision below by direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b) and is sustained by *Burlington Truck Lines, Inc.* v. *United States,* 371 U.S. 156 (1962), and *American Trucking Ass'ns* v. *United States,* 326 U.S. 77 (1945).

QUESTION PRESENTED

The Western Pacific Railroad Company makes up the middle segment of a railroad through route (the Bieber route) which has been created, established, and maintained as a single unit extending between Portland, Oregon, and Los Angeles, California, for the purpose of providing railroad competition with the Southern Pacific route—the only other north-south railroad route serving the Pacific Northwest and the State of California. Union Pacific Railroad and Northern Pacific Railway, although establishing and maintaining with the Southern Pacific Company a system of

through routes and rates via the Portland Gateway (the common point of interchange between Union Pacific, Northern Pacific and Southern Pacific on the one hand and the Bieber route on the other), have refused to establish a similar system with the Bieber route and have thus discriminated against Western Pacific on traffic moving through that interchange.

The question is whether Western Pacific is a "connecting line" within 49 U.S.C. § 3(4), which prohibits discriminatory rates and practices between "connecting lines", even though Western Pacific does not have a direct physical connection with Union Pacific and Northern Pacific at the common Portland Gateway and even though Western Pacific has not in the past, because of the discrimination, been permitted to make up a through route through the common interchange point of Portland.

STATUTES INVOLVED

The National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding §§ 1, 301, 901 and 1001:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act [chapters 1, 8, 12, 13, and 19 of this title], so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly au-

thorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act [chapters 1, 8, 12, 13, and 19 of this title] shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 3(4) of the Interstate Commerce Act, 24 Stat. 380, as amended, 49 U.S.C. § 3(4):

> Interchange of traffic. All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water subject to chapter 12 of this title.

STATEMENT

On February 10, 1961, the Western Pacific Railroad Company and its subsidiary lines[1] filed a complaint with the Interstate Commerce Commission (ICC)

[1] Western Pacific is treated throughout this brief as encompassing its subsidiary lines, the Sacramento Northern Railway and the Tidewater Southern Railway Company. See R. 1-2.

charging the appellees[2] with violations of §§ 1(4)[3] and 3(4) of the Interstate Commerce Act, 49 U.S.C. §§ 1(4), 3(4), and with actions contrary to the National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding § 1. R. 1-8. The Hearing Examiner found in favor of Western Pacific and issued an order recommending that the appellees be required to cease their discriminatory practices which were in violation of § 3(4) of the Act. R. 649-655. A division of the ICC reversed, holding that since Western Pacific neither enjoyed a direct physical connection with Union Pacific and Northern Pacific, nor already participated in a full line of "through rates" with these carriers, Western Pacific was not a "connecting carrier" within the meaning of § 3(4) and therefore was without power to challenge the discriminatory practices. R. 623-645. The full Commission certified the case as "of general transportation importance" (R. 541) but declined to grant further hearing. R. 646. Western Pacific appealed to the three-judge United States District Court for the Northern District of California, which agreed with the Commission's analysis of "connecting line" status, denied Western Pacific's petition, and dismissed the

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[2] The Union Pacific Railroad Company, the Northern Pacific Railway Company and their shortline connections were named as defendants and are commonly referred to throughout this brief as appellees. The Great Northern Railway Company and The Atchison, Topeka & Santa Fe Railway Company (Santa Fe) were also named as defendants, since the prayer for relief requested a prescription of through routes to which they would be a party, but they were not defendants in opposition and pleaded in support of Western Pacific. R. 1-2, 8, 11. Southern Pacific Company intervened in support of the defendants in opposition. R. 14.

[3] Appellants later chose to rely entirely upon § 3(4), and therefore the § 1(4) allegations are no longer part of the case.

complaint. R. 729. On appeal from the District Court, this Court noted probable jurisdiction. 379 U.S. 956 (1965).

For many years prior to 1931, the only railroad route serving the Pacific Coast of the United States (including the States of Washington, Oregon, western Idaho and California) was Southern Pacific Company and its connections. But by the late 1920's and early 1930's, the necessity for competitive service prompted a group of railroads to apply to the Interstate Commerce Commission for permission to construct a short segment of railroad between Klamath Falls, Oregon, and Keddie, California, the purpose of which was to open up a whole new through route paralleling the Southern Pacific route. *Great Northern Ry. Construction,* 166 I.C.C. 3 (1930), 170 I.C.C. 399 (1931). The application of these railroads was supported by 66 intervening parties and was opposed by only 15.[4]

The supporters successfully stressed several reasons why new facilities were needed. The vice president of the Weyerhauser Timber Company, for example, stated that his operation would benefit from access to new markets which the proposed route would provide. 166 I.C.C. at 31. And the president of the Public Utilities Commission of Idaho observed that " * * * the new line will promote an exchange of commodities between

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[4] Support included the railroad or public service commissioners of Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, Washington, and Utah; the counties of Lassen, Plumas, and Sutter, California, Klamath, Oregon, and Salt Lake, Utah; the City of Oakland, California, Salt Lake City, Utah, and the City and County of San Francisco; and the Chambers of Commerce of San Francisco, Oakland, Stockton, Bend, and Tacoma. 166 I.C.C. at 6.

Idaho and California and other southwestern states, by reason of a shorter haul, quicker service, and a consequent lowering of freight rates * * *." *Ibid.* The overwhelming weight of the testimony convinced the ICC of the need to construct the alternate route:

> Compared with the benefits which will accrue to the people of the Pacific West and Northwest through the establishment of new competitive routes, stimulating the interchange of products, the advantage of a diversified car supply, additional passenger service, and the development of the local territory, the moderate capital expenditure here proposed seems amply justified.[5]

As the ICC pointed out, an important purpose of the new service was the competition it would provide for existing routes, specifically that of the Southern Pacific.[6] Another vital factor stressed by the ICC was the potential establishment of joint rates and through

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[5] *Id.* at 39. The ICC also noted that: "San Francisco and Portland are now connected directly by the rails of but a single carrier. The California Railroad Commission points out that this dependence upon the ability of a single rail carrier is without parallel as between comparable agricultural and industrial centers anywhere in the United States. [*Id.* at 33.] * * * The proposed line would give that much more transportation and furnish an alternate route should an existing line be broken." *Id.* at 37.

[6] 166 I.C.C. at 33. "The new line will aid in the development of a great timber area and some considerable agricultural areas in northern California. As we said in *Construction of Lines in Eastern Oregon,* 111 I.C.C. 3, 37, 'Advantages to the shippers of an additional outlet for their product are apparent. It is desirable that transportation facilities of a high order be available to shippers from the Klamath Basin and central Oregon. The assurance of access to lines other than the Southern Pacific at critical periods is a factor of prime importance to such shippers and is clearly in the public interest. Competition within reason rather than monopoly is in the public interest.' " 166 I.C.C. at 39.

service over the full length of all the lines which would connect either directly or through intervening roads with the newly constructed system.[7] The Southern Pacific and Union Pacific, anxious as in the present controversy to maintain their monopoly position, unsuccessfully opposed the creation of the new system, but, as we shall later show, their purpose has been largely accomplished by the discriminations complained of here.

When construction of the new line was completed, it created, for the first time, a route parallel to and competitive with the Southern Pacific route between Portland, Oregon, and Los Angeles, California. See the map at R. 329 and additional maps at R. 460, 466, 471, 472. This route, popularly known as either the "Bieber" route or "Inside Gateway" route, has been operated from its inception as a single unit for the purpose of competing with the parallel Southern Pacific route between the same points. Of necessity, it is made up of the end-to-end connections of Great Northern between Portland and Bieber; the Western Pacific between Bieber and the San Francisco-Oakland-Stockton area of northern California, and the Santa Fe between Stockton and Los Angeles.

For the past 33 years this route has provided the only meaningful railroad competition with Southern Pacific Company and the only choice for shippers in

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[7] "Pursuant to agreement the proposed route will provide joint freight rates between points on the applicants' lines and points on the Santa Fe and its connections, El Paso, Tex., and Albuquerque, N. Mex., and west thereof. They will also extend to Utah, Colorado, and eastern and southern states. The Great Northern would be willing to establish joint rates with other northern lines, thus making the new line a connecting link for all traffic between the northern and southern groups of transcontinental lines." 166 I.C.C. at 29.

this territory.[8] For traffic moving between California and the States of northern Oregon, Washington and western Idaho, both the Southern Pacific and Bieber routes connect with Union Pacific, Northern Pacific and Great Northern at Portland, the only common gateway served by both competing routes. During this same period the Pacific Coast region of the United States has experienced remarkable growth. For example, from 1940 to 1960, the population of the Pacific Coast region expanded by 109% compared to 36% for the United States as a whole. From 1940 to 1958, personal income in the Pacific Coast area grew by 503% compared to 355% for the United States as a whole, and over the same period, value added by manufacturing increased by 886% in the Pacific Coast region, while the comparable United States figure was 475%. Farm marketing cash receipts and retail sales also increased at rates faster than those for the entire country. R. 44-47, 456-457. This type of growth would seem to make it mandatory that the Bieber route, as one of the two railroad transportation arteries of the region, be allowed to compete on an equal basis with the Southern Pacific and its connections. As one shipper stated to the Hearing Examiner:

> * * * [W]hen the Bieber route was established * * *, the public had a reasonable right to expect that there would be a full run-out of rate via that gateway, but this has not yet happened to the

[8] The evidence showed that the Southern Pacific is Western Pacific's "principal competitor." R. 85, and see R. 220, 699. See also *Southern Pacific—Control—Western Pacific Co.*, Finance Dkt. No. 21314, January 27, 1965, slip opinion, pp. 24-25.

The Union Pacific provides some very limited competitive rail service between the Los Angeles area and the Pacific Northwest States of Washington, Oregon, and western Idaho, with its route via Salt Lake City, Utah.

extent of the joint rates that are involved in this proceeding.

It seems to me that there should be no delay in fulfilling the obligation to provide full service via the Bieber Gateway.[9]

The reason that the public's expectations have been frustrated is that Union Pacific and Northern Pacific have, except for an extremely limited number of commodities,[10] consistently refused to join the Bieber route

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[9] Statement of Clifford Worth, Supervisor of Traffic Analysis, Fibreboard Paper Corporation. R. 138, 140.

[10] Several of these exceptions are instructive, because they demonstrate that when traffic *has* passed via the Bieber route at competitive rates, it has moved without the slightest difficulty.

When U. S. Pipe & Foundry Corporation established an iron and steel pipe producing facility at Decoto, California, it discovered that it could not move its product to Union Pacific or Northern Pacific points via the Western Pacific at the same rate level as it could via the Southern Pacific. It filed a formal complaint, in 1952, charging a violation of 49 U.S.C. § 3(1), but before the case could be brought to hearing, the rates being sought were voluntarily established on a non-discriminatory basis. Over 250 cars of pipe subsequently moved over the Bieber route during the two years prior to the hearings in the instant case. R. 34, 40, 215-216, 272.

In 1960 The Campbell Soup Company, located on Western Pacific's lines at Sacramento, filed a formal request for non-discriminatory rates via the Bieber route, claiming that it had to pay an additional switching charge whenever it moved traffic to or from Union Pacific or Northern Pacific points. Southern Pacific promptly deviated from its normal policy and published tariff items calling for the absorption of the Western Pacific switching charges on Campbell Soup traffic. This mollified the shipper but still deprived Western Pacific of its own long haul. R. 628.

Western Pacific filed a § 3(4) complaint in 1959 relating only to automobiles and automobile parts, but during the pendency of the hearings the automobile plant that had precipitated the complaint was established on the lines of the Southern Pacific. Consequently, although non-discriminatory rates were published, no automobiles or parts have ever passed under them. R. 41, 200, 216-217, 272-273. Similarly, joint rates on livestock were ordered by the ICC but resulted in no movements. R. 39, 215, 273.

in through rates on the same level as those carriers participating with Southern Pacific Company, and therefore the joint rates with Southern Pacific are in virtually all instances lower than the combination rates made applicable to the Bieber route.[11] The rate situation is such that Southern Pacific is accorded joint through rates north of Portland by Union Pacific, Northern Pacific and Great Northern. Thus, joint through rates apply via Southern Pacific's single-line route *and* via its joint route with Santa Fe over northern California junctions. Great Northern applies equal rates over Portland with both Southern Pacific and Bieber routes, while Northern Pacific and Union Pacific refuse to equalize the rates with their common connections via the same point.

These discriminatory rates have continued even though witness after witness testified in this case that the refusal of appellees to grant Western Pacific the same rates accorded Southern Pacific has been harmful not only to Western Pacific but to shippers, to the public and to the entire Pacific region. Here are only a few of their many comments:

> [The members of the Canners League] want the opportunity of using both railroads * * *. [W]e want it for the purpose of car supply and service. [The Chairman of the Traffic Committee of the Canners League of California, which represents canners supplying over 90,000,000 cases of canned goods—75 per cent of all California pack, R. 148, 149.]
>
> I believe it is important that we have additional inter-railroad competition south of Portland. * * * [Inter-rail competition] serves as an incentive to excel in service matters and we believe this would

[11] R. 21-31, 214, 331 *et seq.*, 627, 652.

be beneficial to our company. * * * It would [also] increase the flexibility of rail service by affording us a wide choice of routes for such purposes as stopovers in transit and reconsignment. [The Traffic Manager of Consolidated Dairy Products Co., R. 130-131.]

Due to the present rate situation, we do not have a free choice of routing * * *. It is my firm conviction that if we had available two competitive routes * * *, we would be the recipient of improved services, and greater efficiencies from the carriers. [The Traffic Manager of Fisher Flouring Mills Co., R. 106, 107.]

Other than the nine cars mentioned, we must ignore any customer request for Western Pacific routing * * *. The routes sought * * * would give a much greater flexibility to our transit operation, and most important of all to us would be a saving of 7½ cents per cwt. on an appreciable number of cars. [The Traffic Manager of Centennial Mills, Inc., R. 111, 113.]

There is no question in my mind but that we would route a considerable number of shipments to Sutter from points on the Northern Pacific through Bieber if we had available the same rates as are applicable from origins on the Great Northern. When we have used the Bieber gateway in connection with service on the Great Northern and Western Pacific, we have found such route to be fully satisfactory. [The Traffic Manager of Trinidad Bean & Elevator Co., R. 117, 119.]

Frankly, we have found that the service * * * [on] the Bieber route is more dependable than the service of the Southern Pacific via Portland. * * * If the Northern Pacific were to join in the through rates here sought, we could use their cars, give

them a line haul, via the Bieber Gateway, and both facilitate or retain our quicker delivery schedule and not have to pay the considerable penalty which is present in today's rate schedule via such a route. [The Traffic Manager of Pacific Coast Paper Mills, a division of Puget Sound Pulp & Timber, R. 121, 122.]

We feel that we should have both routes available with the same rates. This, we believe, would eliminate delay that we now experience from having to depend upon the car supply of only one railroad * * *. It is my opinion that with the equipment resources of both railroads available, we would save many orders which we now lose because the customers demand immediate service. [The Traffic Manager of H. J. Stoll & Son, R. 127, 128.]

[W]e would then be able to draw upon the additional car supply of the Western Pacific Railroad, with the end result that we would be able to ship more of our traffic by rail to the Northwest than we are able to today during these full peak shipping seasons. * * * [I]t seems clear to us at Fibreboard that it is high time that the railroads eliminated artificial barriers against the use of their services. [The Supervisor of Traffic Analysis of Fibreboard Paper Corp., R. 138, 139, 140.]

We feel that the failure to publish joint through rates from Longview to California points via the Bieber Gateway has inconvenienced us, and our customers. [The General Traffic Manager of the Longview Fibre Co., R. 154, 155.]

I feel that it is important for us to have competitive routings available, and I believe that such a situation would considerably improve our railroad service to Northern California. [The Assistant General Traffic Manager of Boise Cascade Corp., R. 161, 162.]

The present restrictions on the final destinations of carload traffic moving from California hamper our efforts to divert this traffic to various destinations. * * * [Making the Bieber route available] would provide more expeditious routings * * *. I believe that it would open up many more markets to unsold cars moving over the Bieber route. [The Secretary and Traffic Manager of the Portland Produce Merchants Ass'n, Inc., R. 250, 251-252.]

It is our feeling that if we had competitive routes and had a choice, we would get better service not only via the Inside Gateway, but also from the Southern Pacific routes. * * * If the Commission grants the relief sought by the Western Pacific and the rates become applicable, we would certainly utilize that service. [The Traffic Manager of the Yakima Fruit Growers Ass'n, R. 152, 153.]

We feel that it would be to the advantage of our growers if we had through rates * * *. We feel that it would be more economical for us if we were able to ship directly from McHenry by rail * * *. [The Office Manager and Sales Representative of the Turlock Cooperative Growers, R. 158, 159.]

It is a well-known fact that the basic economy of Oregon is that of an agriculture and lumber economy. We feel that the greater expansion of through rates and through routes would materially assist our economy and, therefore, we strongly urge and support the complainants' position. [The Manager of the Portland Freight Traffic Ass'n, R. 165, 167.]

As the testimony amply demonstrated,[12] the discriminatory rates have prevented the Bieber route in recent years from being able to compete effectively with Southern Pacific for most traffic moving to or from points served in the Pacific Northwest by Union Pacific or Northern Pacific, although its physical facilities and services are more than adequate for the job.[13]

Western Pacific's aggressive sales efforts to participate in the available traffic have in the face of the rate situation been unavailing. A careful study of the competitive traffic available at the time of hearing showed that at least 25,000 carloads a year are artificially rendered noncompetitive and lost to Western Pacific. R. 88-90, 653. Included in that total are approximately 2,250 carloads of traffic which either originated or terminated at facilities served exclusively by Western Pacific, with the result that on such vital traffic Western Pacific could participate only to the extent of providing switching service to or from Southern Pacific. R. 95-96. Western Pacific has been unable to locate a number of important industries solely because of the current rate discrimination. Industry location, a vital

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[12] Appellees made a point of asking a few of the shipping representatives how many formal written requests for joint rates over the Bieber route they had previously submitted. The record is clear that most shippers had fruitlessly made informal requests and regarded formal applications as a useless gesture. *E.g.*, R. 103-104, 123, 131, 160, 254. Moreover, after the report and order were issued, over 100 requests from shippers were formally filed with the carrier rate bureaus for voluntary publications of the rates that Western Pacific was seeking through its complaint. The Commission, however, refused to reopen the case for the introduction of this latter evidence. See R. 512.

[13] For example, Western Pacific's freight fleet has grown from 4,951 cars in 1954 to 6,056 cars in 1960, an increase of 22%. R. 459. See also R. 47-48, 64-66, 67, and the ICC's statement at R. 632.

phase of all rail service, is strongly competitive. Southern Pacific uses the current rate situation as an effective sales tool in locating industries by advising the shipper that Southern Pacific alone can provide for a full line of rates to the Northwest. R. 81-84, 88. As the Examiner put it, the imposition of higher combination rates "precludes shippers from using the 'Inside gateway' from or to such points [in California and the Pacific Northwest]. The complainants are even deprived of traffic which they themselves originate."[14]

After careful consideration of the evidence, the Hearing Examiner held that there was discrimination, and that "There is no justification in this record for such treatment of a connecting line. The granting of a full line of rates to one railroad at an interchange point while at the same time limiting the extent of such rates to the favored line's competitor is the essence of discrimination. It is the type of unlawful discrimination that section 3(4) of the act aims to prevent." R. 654. Therefore, the Hearing Examiner concluded "that the defendants' refusal to interchange traffic at Portland, other than cast iron pipe, automobiles, livestock and class rated traffic, in the line haul of which the complainants participate via Bieber, at rates competitive with those afforded the Southern Pacific by them is an unlawful discrimination in violation of section 3(4) of the act and should be removed." R. 655. Accordingly, he recommended that the appellees be required to cease the discrimination. *Ibid.*

A division of the Commission reversed the Examiner and held that since Western Pacific neither had a direct physical connection with appellees nor already

[14] R. 652. The division of the Commission conceded this fact. R. 629.

participated in a full line of through rates with these carriers, Western Pacific had no power to challenge the discriminatory practices. R. 623-645. The division based its holding on its interpretation of the requirements for "connecting line" status which it said were set forth by this Court in *Atlantic Coast Line R.R. v. United States*, 284 U.S. 288, 293 (1932).[15] In a Petition filed with the Commission in support of Western Pacific's complaint, the United States pointed out the incongruity of this conclusion:

> [The report and order] specify, as the reason the discrimination cannot be eliminated and the monopoly broken, the very device which has made this monopoly position possible, namely defendants' long-standing refusal to accord to Western Pacific and its connecting lines the same basis and level of rates via the Portland gateway as they accord intervenor Southern Pacific.[16]

Despite this logic, the Commission refused to reverse the division, and Western Pacific filed suit before the three-judge United States District Court for the Northern District of California.

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[15] *Ibid.* The division also held that the Bieber and Southern Pacific routes are not sufficiently similar. R. 643. We believe we demonstrated beyond question to the District Court that the division's conclusions on this score were wholly fallacious. In any event, the District Court never reached the question of similarity, deciding the case wholly on the issue of "connecting line" status. We demonstrate later in our brief not only that the District Court erroneously decided the connecting lines issue but that a remand for further consideration of the issue involving similarity of conditions is unnecessary, since the record fully supports our position in this regard.

[16] "Petition of United States for Leave to Intervene for the Purpose of Petitioning the Full Commission for Reconsideration of the Report and Order of Division 2 and to be Heard on Oral Argument". R. 550, 551.

The District Court found as a matter of law that Western Pacific was not a "connecting line" within § 3(4) of the Act, which prohibits rate discrimination between connecting lines. It based this conclusion, first, on the following two sentences from the *Atlantic Coast Line* decision: "There is no warrant for limiting the meaning of 'connecting lines' to those having a direct physical connection with the Clinchfield. The term is commonly used as referring to all the lines making up a through route." 284 U.S. at 293; R. 733. Then, ignoring the way in which "through route" was used in *Atlantic Coast Line,* the District Court turned instead for a definition of the term to a case involving not § 3(4) but § 15, *Thompson* v. *United States,* 343 U.S. 549 (1952). R. 733. There, this Court said: "In short, the test of the existence of a 'through route' is whether the participating carriers hold themselves out as offering through transportation service." 343 U.S. at 557. By putting together these sentences from the *Atlantic Coast Line* and *Thompson* cases, the District Court concluded that Western Pacific was not a connecting line because it connected with the appellees at Portland only by means of an intermediate carrier (the Great Northern), and because the appellees had refused to hold themselves out as offering through service in connection with the Bieber route. R. 733-734. But the District Court concluded significantly that "Because the Supreme Court has not rendered any decision on this question since *Atlantic Coast Line,* this Court is bound to follow that decision. Any further liberalization of the present definition will have to come from the Supreme Court." R. 734.

SUMMARY OF ARGUMENT

A complaining railroad need not have a direct physical connection at the common interchange point in order to enjoy "connecting line" status under the anti-discrimination provisions of § 3(4) of the Interstate Commerce Act. Nor is it necessary that the discriminating carriers previously have held themselves out as offering through service over the complaining line. Where a route is physically available for competitive service—and particularly where, as here, the route is constructed and operated for the purpose of providing a competing route—carriers cannot discriminate against it when reasonably similar conditions and circumstances prevail.

This position is dictated not only by the facts of competitive life in this case (the Southern Pacific is ten times the size of the competing Western Pacific) but also by the legislative history of the Act and by this Court's decisions. Nothing in the Act's history even suggests the definition of "connecting lines" imposed by the opinion below. On the contrary, Congress apparently intended to describe a continuous series of lines where the traffic on one could physically move onto the tracks of the others. And beyond all doubt Congress intended to outlaw rate discrimination in all its forms and in all its manifestations.

The principal case relied on by the District Court, *Atlantic Coast Line R. R.* v. *United States*, 284 U.S. 288 (1932), instead supports our position. The complaining railroad in that case had no physical connection with the discriminating carrier, and there was no holding out of through service, since construction of the route had not even been completed at the time of the discriminating schedules. Yet this Court held the dis-

crimination illegal, and the ICC subsequently held it illegal under § 3(4).

The term "through route" does not appear in § 3(4). Cases interpreting that term as it is used in other sections of the Act are not applicable here. If the term has any relevance at all in a § 3(4) case, it is a loose concept connoting physically available service. This is established not only by *Atlantic Coast Line* but by the successive *American Barge Line* decisions; by *Chicago, I. & L. R. R.* v. *United States,* 270 U.S. 287 (1926) (where no physical connection and no joint services were present), and by other cases dealt with in detail.

If the District Court's views were to prevail, a carrier could discriminate by granting joint rates to one competitor and none at all to the other, even though it would be violating § 3(4) by granting slightly lower joint rates to one carrier than to the other. The discrimination cannot thus be used to exculpate itself. This is particularly true in the light of the substantial injuries to Western Pacific caused by the discrimination (a loss of substantial traffic that it originates itself, and a potential loss of 25,000 carloads a year that would be available but for the discrimination), as well as the proven injuries to shippers, to the public, and to an explosively-growing section of the country.

If the Court agrees that Western Pacific is a connecting line, there need be no remand, for the record establishes beyond doubt that there are present between the two competing routes similar circumstances and conditions that require equal treatment.

ARGUMENT

I. WESTERN PACIFIC IS A CONNECTING LINE

The District Court held that Western Pacific had no standing to bring suit because it is not a "connecting line" within the meaning of § 3(4) of the Interstate Commerce Act. The court did not in any way question the fact that Western Pacific forms the middle link in the Bieber route, that the Bieber route connects with the appellees at Portland, and that the Bieber route competes on north-south traffic with the Southern Pacific route, which also connects with the appellees at Portland. The court also did not dispute the fact that the appellees have granted the Southern Pacific joint rates which are substantially lower than the combination rates accorded the Western Pacific, so that in effect the Bieber route is commercially closed to interchange traffic. The sole basis of the court's decision was that Western Pacific does not itself connect physically with the appellees at the interchange, and that the appellees have not previously held themselves out as offering through service over the Bieber route.

We submit that this is not the test of "connecting line" status. Our position is that carriers cannot grant discriminatory rates to one route and not to another route which is physically available for competitive service, particularly when similar circumstances and conditions prevail. This is all the more true where, as here, the competing route was constructed and has been operated for the very purpose of providing an alternative to the favored route. As shown by our Statement,

supra, there can be no question about the competitive nature of the Bieber route, because it was constructed specifically to compete with the Southern Pacific route, and the single factor keeping it commercially closed is the discrimination in rates enforced by the appellees.

It must be made clear at the outset that the Western Pacific, by the very nature of its size, must compete without the intervention of artificial barriers. As the ICC has recently found,[17] Western Pacific in 1961 had 1,927 miles of rail and ferry operations and total assets of less than $181 *million.* In that same year, the Southern Pacific by most standards was the third largest railroad in the United States, with 22,604 miles of track and total assets of $2.4 *billion.* In other words, Southern Pacific in most respects is more than ten times larger than Western Pacific.

Nevertheless, Western Pacific seeks no advantages or concessions. It seeks only the right to compete. That requires an end to the present discriminatory rate practices by Union Pacific and Northern Pacific. No physical additions or changes in structures or services are necessary. Equalization of the rates published with the two common route connections at Portland would impose no greater service obligation upon either Union Pacific or Northern Pacific than they presently undertake in conjunction with Southern Pacific traffic. The only change would be one of doing away with rate discriminations.

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[17] *Southern Pacific—Control—Western Pacific Co., supra* n. 8, slip opinion, p. 8, App. A, pp. 2-4.

Northern Pacific and Union Pacific have, for years, dictated which carrier south of them will be entitled to offer their respective services to shippers. Our position is that the only legitimate decision as to which route will handle the traffic south of Portland should be that of the shipper exercising a free choice, on an equal rate basis, between presently-available services.

As discussed more fully below, we think the issues in this case have already been decided favorably to Western Pacific by the Court's decisions in such cases as *American Barge Line,*[18] *Chicago, I. & L. R. R.,*[19] and, properly construed, *Atlantic Coast Line.*[20] However, it is also important to point out how the term "connecting lines" developed within the context of § 3(4), because the legislative history, as well as this Court's opinions, fully support our position.

The present reference to "connecting lines" in § 3(4) is based on § 3 (par. 2) of the 1887 Act, which provided that carriers must afford equal facilities for the delivery of passengers and property "to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines." 24 Stat. 380. But even prior to the passage of the Interstate Commerce Act, Con-

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[18] *American Barge Line Co.* v. *Alabama G. S. R. R.,* 296 I.C.C. 247 (1955), *aff'd,* 303 I.C.C. 463 (1958), *modified,* 306 I.C.C. 167 (1959), *rev'd sub nom. Arrow Transp. Co.* v. *United States,* 176 F. Supp. 411 (N.D. Ala. 1959), *aff'd sub nom. State Corp. Comm'n of Kansas* v. *Arrow Transp. Co.,* 361 U.S. 353 (1960).

[19] *Chicago I. & L. R.R.* v. *United States,* 270 U.S. 287 (1926).

[20] *Atlantic Coast Line R. R.* v. *United States,* 284 U.S. 288 (1932).

gress had made use of the "connecting lines" concept. In 1866, Congress passed "An Act to Facilitate Commercial, Postal, and Military Communication among the Several States." 14 Stat. 66. This Act provided that "every railroad company in the United States * * * is hereby *authorized* to carry upon and over its road, boats, bridges, and ferries, all passengers, troops, government supplies, mails, freight, and property on their way from any State to another State, * * * and to *connect with* roads of other States, so as to form *continuous lines* for the transportation * * * to the place of destination" (emphasis added). The purpose of this Act and a companion Act, entitled "An Act to Authorize the Construction of Certain Bridges and to Establish Them as Post-roads" (14 Stat. 244), was analyzed as follows:

> It is claimed that the objects of these acts are to secure to travel and freight going from State to State, through lines of transportation without change of cars. * * * We fail, however, to find in these acts any provisions requiring railroads to connect so as to form such continuous lines, or requiring the cars of one to be hauled over the roads of another. * * * They simply *authorize* the railroad corporations so to conduct their business, and thereby exempt such a course from local interference or prohibition, on the part of State or municipal legislation. *They do not command connection by railroads; they simply permit it.* [*Richmond* v. *Dubuque & S.C.R.R.*, 33 Iowa 422, 499 (1872), *aff'd*, 86 U.S. 584 (1873) (emphasis added).]

Subsequent to the passage of these 1866 Acts and the decisions interpreting them, Congress came to realize that mere "authorization" was not enough to secure the untrammeled flow of people and property along con-

necting railroad lines. The result was the creation in the 1887 Act of a "requirement" rather than an "authorization." Except for the addition of the word "fares," the relevant language remained the same in the 1920 amendment. 41 Stat. 479. The latest amendment in 1940 provided that carriers must afford equal facilities for the delivery of passengers and property "to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper." 54 Stat. 903-904, 49 U.S.C. § 3(4).

It must be emphasized that nothing provided in the Act or stated in Congress supports even by implication the interpretation of "connecting lines" imposed upon appellants in this case by the ICC and the District Court. What the legislative history does make clear, however, is that "every variety of unjust discrimination" was to be prohibited. For example, the Senate Report on the original bill stated:

> The provisions of the * * * [Interstate Commerce Act] are based upon the theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment. * * * [S. Rep. No. 46, 49th Cong., 1st Sess., 215-216 (1886).[21]]

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[21] This language was cited and relied upon by the Court in *A. L. Mechling Barge Lines, Inc.* v. *United States*, 376 U.S. 375, 384 (1964).

And Senator Cullom, introducing the bill, stated:

> The third section is broader and more general in its terms [than the second section, outlawing the long-short haul differential] and * * * contains a general prohibition of every variety of unjust discrimination. * * * The second part of the section is modeled in part upon the English and in part upon similar statutes in several of the States. Its purpose is to require railroads to furnish to connecting roads all reasonable and proper facilities for the interchange of traffic that may be necessary for the convenience of the public, and to prevent one road, or a combination of roads, from 'freezing out' a connecting line by refusing to accept traffic from it or deliver traffic to it upon any terms, as has been done. [17 Cong. Rec. 3472 (1886).]

The English statute to which Senator Cullom no doubt referred was The Railway and Canal Traffic Act of 1854, 17 & 18 Vict. c. 31, sec. 2:

> Every railway company * * * shall, according to [its] respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways * * * belonging to or worked by such companies respectively * * *; and no such company shall make or give any undue or unreasonable preference or advantage to * * * any particular person or company, or any particular description of traffic * * *, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage * * *; and *every railway company * * * having or working* [*sic*] *railways * * * which form part of a continuous line of railway communication* * * * shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways * * *

> without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered [*sic*] to the public desirous of using such railways * * * as a continuous line of communication. * * * [Emphasis added.]

In construing the meaning of "continuous line of railway communication," the Railway and Canal Commission dealt with a case in which the X railway owned two separate lines of track connected by lines of the Y and Z railways. At the junction of the X and the Y railways, there was a physical union of the tracks, but routing across the junction had not been sanctioned by the Board of Trade. Shippers and the X railway were anxious to take advantage of the route over the two intervening lines, but the management of the intervening lines balked at the suggestion. The Commission ruled that the route did not at that time constitute a "continuous line of railway communication" because of the failure to obtain the Board of Trade's sanction, but it added significantly:

> * * * [T]he public desirous of using the railways as a continuous line of communication are not to be prejudiced by any disputes as to the rights of the companies *inter se*; and if the application [to the Board of Trade] had * * * been properly framed we should have had no difficulty in making an order against the companies, which would have had the effect of immediately opening this junction for the purpose of the traffic in question. [*Hammans, Foster* v. *Great Western Ry.*, 4 Ry. & Can. Tr. Cas. 181, 185 (1883).]

In another case, the G railway had to run over part of the M railway's line to reach the L railway at the town of A. The Commission, construing the "continu-

ous line of railway communication" provision of The Railway and Canal Traffic Act, as well as other statutes, ruled that the lack of a direct physical connection between the G railway and the L railway at A did not preclude the G railway from taking advantage of its right to apply for sidings and other facilities at A in order to switch trains at the A junction. *Great Central Ry.* v. *Lancashire & Y. Ry.*, 13 Ry. & Can. Tr. Cas. 266, 274 (1908), *aff'd*, 14 Ry. & Can. Tr. Cas. 131 (C.A. 1910).

Neither in the legislative history of The Railway and Canal Traffic Act nor in its subsequent construction by the Railway and Canal Commission or by the English Courts is there any intimation that only railroads which have a direct physical connection with each other, rather than through an intervening line, may take advantage of the rights conferred by the Act. This absence of a requirement of a direct physical connection is also true of the American state statutes to which Senator Cullom referred. Instead, examination of state statutes and cases construing them lends force to the proposition that the phrase "connecting lines" or "continuous line of railway communication" was used to characterize a situation in which it was physically possible for the rolling stock of railroad A to proceed onto railroad B, then onto railroad C, and so on.

Early state legislatures were concerned because different railroad companies were using different gauges of track, failing to install switching facilities, etc. Tennessee, for example, passed a law requiring the gauge of all the railroads in the state, except those connecting with railroads of other states, to be five feet. At the same time, it passed a statute against rate dis-

crimination somewhat analogous to the provisions of § 3(4) of the Interstate Commerce Act:

> Every railroad company, when required, shall receive on its road and branches the full loaded freight cars of all other companies, transport them to their destination, and return them, without charging for the transportation of the goods, wares, and merchandise, or produce therein, a greater rate of freight than they charge for similar transportation in their own cars. [Act of 1852, Tenn. Code §§ 1118, 1120, construed in *Louisville & N.R.R.* v. *State,* 68 Tenn. 522, 524 (1876).]

In Pennsylvania, not even a diversity of gauge prevented connecting-line status for two railroads physically separated by a third: "* * * we decide that the Catawissa and the Atlantic and Great Western are railroads connected by an intervening road, notwithstanding the diversity of gauge prevents the running of common cars." *Philadelphia & E.R.R.* v. *Catawissa R.R.,* 53 Pa. 20, 61 (1866). Thus, the concept was clearly established that "Railroads can be connected, either directly or by intervening roads." *Black* v. *Delaware & Raritan Canal Co.,* 22 N.J. Eq. 130, 402-403 (1871), *rev'd on other grounds,* 24 N.J. Eq. 455 (1873).[22] See also *Atchison, T. & S. F. R. R.* v. *Fletcher,* 35 Kan. 236, 10 Pac. 596 (1886); *Mayor and City Council of Baltimore* v. *Baltimore & O.R.R.,* 21 Md. 50, 89, 91-92 (1864); *Fitchburg R.R.* v. *Grand Junction R.R. & Depot Co.,* 86 Mass. (4 Allen) 198, 205-206 (1862); *Baltimore & O.R.R.* v. *Wheeling,* 54 Va. (13 Gratt.) 40, 69-70 (1855). In other words, "connecting" did not necessarily mean a direct physical connection.

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[22] As pointed out below, this case was relied on by the ICC in the *Atlantic Coast Line* case to show that lines need not be physically connected in order to be "connecting lines."

Despite this legislative history, the ICC and the District Court in the instant case concluded that in order for there to be "connecting line" status, either there must be a direct physical connection at the common interchange, or all of the participating carriers must hold themselves out over a period of time as offering through transportation service. This conclusion was reached because of what we believe was a faulty interpretation of this Court's opinion in *Atlantic Coast Line R.R.* v. *United States,* 284 U.S. 288 (1932).

The true nature of the *Atlantic Coast Line* case can only be gleaned from a review of the briefs in this Court and the opinions not only of this Court but of the ICC and the District Court.

The origins of the case go back to 1923, when the Atlantic Coast Line Railroad (Atlantic) and the Louisville & Nashville Railroad (L & N) sought to lease the Carolina, Clinchfield & Ohio Railway (Clinchfield). At that time, Clinchfield connected with the Chesapeake & Ohio (C & O) at Elkhorn City, Kentucky, and ran in a southerly direction to Spartanburg, South Carolina. There it connected both with the Piedmont & Northern (Piedmont), which ran to Greenwood, South Carolina, and with the Charleston & Western (Charleston), which was owned by Atlantic and which ran from Spartanburg *through* Greenwood to Augusta, Georgia. At Augusta, Charleston connected with the Georgia & Florida (G & F), which ran southward. Thus, in 1923 the only through route in operation between northern points on the C & O and southern points was via the Clinchfield, the Charleston, and G & F. Since there was no G & F connection between Greenwood and Augusta, the only competing stretch of line

was a short one by way of the Piedmont from Spartanburg to Greenwood.

The ICC allowed the Atlantic and the L & N to lease the Clinchfield on certain conditions, two of which are relevant here. Condition 3 required the parties to continue *existing* routes and gateways for the interchange of traffic and "the present neutrality of handling the traffic inbound and outbound" so as to permit equal opportunity for service and routing or movement of competitive traffic "to and from *all connecting lines reached by the line*" of the Clinchfield, without discrimination (emphasis added).[23] Condition 4 required the parties to permit carriers *"now connecting, or which may hereafter connect,"* with the Clinchfield to participate without discrimination in through routes and joint rates between points at and beyond the Ohio River on the one hand, and points in southeastern and Carolina territory on the other, so that the Clinchfield could be maintained "as an open route equally available to all carriers *connecting with* the Clinchfield for traffic between the points designated" (em-

[23] Condition 3 read in full:

"So far as lies within the power of the applicants, existing routes and channels of trade and commerce heretofore established by other carriers in connection with the Clinchfield shall be preserved, existing gateways for the interchange of traffic with such other carriers shall be maintained, and the present neutrality of handling traffic inbound and outbound by the Carolina, Clinchfield & Ohio Railway and its subsidiary, the Carolina, Clinchfield & Ohio Railway of South Carolina, shall be continued so as to permit equal opportunity for service and routing or movement of traffic which is competitive with traffic of the applicants, or either of them, to and from all connecting lines reached by the line of the Clinchfield companies, without discrimination in service against such competitive traffic." 90 I.C.C. 113, 133 (1924).

phasis added).[24] The parties agreed to the conditions, and the lease went into effect in 1924. See 90 I.C.C. 113 (1924).

Two years later, in 1926, the ICC authorized the construction by G & F of an extension of its line (known as the Greenwood extension) from Augusta to Greenwood. 117 I.C.C. 473 (1926). *This extension was not actually completed and opened until 1929, three years later.* In the meantime, tariffs had already been filed for joint rates south to and through Augusta over the Clinchfield and the Charleston. The lessees of the Clinchfield did not want these rates to become applicable over the newly-constructed Greenwood extension of the G & F. Therefore, just prior to the opening of the Greenwood extension, the lessees filed schedules

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[24] Condition 4 read in full:

"The applicants shall permit the line of the Clinchfield and its subsidiaries to be used as a link for through traffic, via existing gateways of interchange, or via such gateways as may hereafter be established under authority of the commission by means of the connecting lines which the Louisville & Nashville Railroad Company proposes to build, equally available to such other carriers, now connecting, or which may hereafter connect, with the line of the Clinchfield and its subsidiaries, as may desire to participate in through routes and joint rates between points in territory north and west of the line of the Clinchfield and points at and beyond the Ohio River on the one hand and points in the southeastern and Carolina territory on the other, under divisions to be agreed upon by the applicants, or either of them, and/or the Clinchfield organization, on the one hand, and by the other participating carrier or carriers on the other, and shall not discriminate as to rates, fares, and charges against such participating carrier or carriers as compared with the applicants, or either of them; the intention of this provision being that the line of the Clinchfield and its subsidiaries shall be maintained as an open route equally available to all carriers connecting with the Clinchfield for traffic between the points designated." 90 I.C.C. at 134-135.

designed to restrict to their own lines the already-filed joint rates, thus preserving their own long haul.[25]

Before the schedules went into effect, the G & F and the Piedmont protested to the ICC, claiming that the schedules violated the conditions already established in the lease case. The ICC agreed and cancelled the schedules. These lease conditions, said the ICC, were intended "to preserve the relationships then existing between the Clinchfield, on the one hand, and the public and connecting lines of railroad, on the other hand, which were the relationships *usually and normally existing* between independent railroads and those whom it serves." 165 I.C.C. 3, 15 (1930) (emphasis added). It explained: "While our immediate concern [in the lease case] was to prevent the closing of any gateways and routes then existing, there was no thought of excluding such changes or additions as would further the general purpose." *Ibid.* And to the argument that the G & F had not even connected with the Clinchfield at the time of the lease, the ICC replied: "There is no warrant for limiting the meaning of 'connecting lines' to the direct connections of the Clinchfield. The term is commonly used in referring to the lines in general making up a through route. * * * The test to be applied is that of the proper relationships between the Clinchfield, as an independent line [because the lease conditions had required that it be kept independent], and its connections to and from southeastern territory." *Id.* at 15-16.

Parenthetically, it should be noted here that the ICC by the use of this language could not have meant by a "through route" what the ICC and the District

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[25] Transcript of Record, *Atlantic Coast Line R.R.* v. *United States*, No. 88, October Term 1931, pp. 14, 15.

Court have taken "through route" to mean in the instant case. That is, they could not have meant a holding out by all carriers of a "through route" *through* the point of interchange. The "through route" in the *Atlantic Coast Line* case, in fact, had never even gone into effect. Before the ICC decision was rendered and while the new route was still under construction, the lessee carriers had taken affirmative steps to make certain that joint rates already in effect would never apply over the new route, once completed.

Following the ICC decision, the lessees of the Clinchfield sued in court for an injunction. The court dismissed the bill, quoting large portions of the ICC's opinion with approval. *Atlantic Coast Line R. R.* v. *United States,* 48 F. 2d 239 (W.D.S.C. 1931). Significantly, the court emphasized that the net effect of the lease conditions had been to continue the Clinchfield "as a neutral route," so that "roads handling through traffic passing over it were to be treated just as though the lease were not in existence and the [Clinchfield] were an entirely independent road independently operated." *Id.* at 243. The conditions, said the court, enabled the Clinchfield, Atlantic and L & N "to serve the purposes which they put forward as reasons for the acquisition and at the same time to preserve the independent status of the [Clinchfield] for the benefit of the public and the protection of connecting carriers." *Id.* at 244-245. The court simply assumed that the lines involved were in fact "connecting" carriers.

That was the status of the case when the lessees appealed to this Court. In their brief, the lessees argued that the lease conditions, properly construed, did not require the lessees' lines to be short-hauled "over future routes over a line of railroad not then in exist-

ence and not now connecting with or reached by the lines of the Clinchfield."[26] The lessees went on to contend that the ICC by its decision had flouted §§ 15(3) and (4) of the Act (Brief for Appellants, *supra,* at pp. 27, 35, 41-43, 46-48), pointing out that the schedules filed by the lessees prevented the opening of future routes rather than closed existing routes. *Id.* at 48. It was clear from the wording of the conditions (and from modifications affected in them), argued the lessees, that the ICC was thinking only of existing routes then connecting with the Clinchfield, and not future routes which would not even connect directly with its lines. *Id.* at pp. 23-25. The Greenwood extension *"did not then and does not now connect with the line of the Clinchfield." Id.* at 26; emphasis added. And while the words "connecting lines," standing alone, might possibly include lines by an intermediate carrier, the words "connecting lines *reached by* the line of the Clinchfield" clearly could only mean lines with a direct physical connection. *Id.* at 30; emphasis added. To illustrate the point, the lessees pointed out that "it is entirely possible to get a car containing traffic from the track of the Clinchfield at Spartanburg to the track of the Georgia and Florida at Greenwood, and yet no one can truthfully say that the Georgia and Florida, which terminates at Greenwood, connects with the line of the Clinchfield, which begins at Spartanburg, or that the rails of the Georgia and Florida are 'reached by the line of the Clinchfield Companies.'" *Id.* at 31.

We emphasize this argument by the lessees because it is analogous to the one made by the appellees in the

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[26] Brief for Appellants, *Atlantic Coast Line R. R.* v. *United States,* No. 88, October Term 1931, p. 11.

instant case, and yet this Court rejected it in its *Atlantic Coast Line* decision.

Opposing the lessees, the United States and the ICC in their *Atlantic Coast Line* brief argued that "connecting lines" did not mean a direct physical connection. They pointed out, for example, that in *Black* v. *Delaware & Raritan Canal Co., supra,* 22 N.J. Eq. 130, 398, 402, two railroads were held to be "connected" even though they were joined together only by means of intervening roads.[27] The United States and the ICC then made this alternative argument:

> We also submit that through traffic over the Greenwood extension is within the protection of the conditions attached to the Clinchfield lease even if the protection there given is limited to lines physically connecting with the Clinchfield. The Piedmont, by reason of its connection with the Clinchfield on the north and with the Georgia & Florida on the south, is part of a through route between points at and north of the Ohio River and points in the Southeast. The restrictive schedules filed by appellants closing the Greenwood extension to joint rates on through traffic between these points prevent the Piedmont from participating in this through traffic via its connection with the Georgia & Florida at Greenwood. Appellants can not close the Piedmont line to this through traffic by restrictions preventing it from interchanging traffic with the Georgia & Florida on the basis of joint rates. The conditions of the Clinchfield lease require that road to be maintained 'as an open route equally available to all carriers connecting with the Clinchfield for traffic between the points designated.' (R. 92.) It is not so equally available if the Atlantic

[27] Brief for the United States and the Interstate Commerce Commission, *Atlantic Coast Line R.R.* v. *United States,* No. 88, October Term 1931, pp. 16-18.

> Coast Line system can reach the Southeast on joint rates but the Piedmont can not reach the same region, via the Georgia & Florida, on the same joint rates. [Brief for the United States and the ICC, *supra,* at pp. 18-19.]

Note that this argument treated as a "through route" a combination of lines (the Clinchfield, Piedmont and G & F) that had never actually been open to traffic, since the Greenwood extension of the G &F connecting with the Piedmont had not even been completed. Note also the assumption that since one set of lines (those of the Clinchfield and its lessees) could link the north and the south by the use of joint rates, it was a violation of the lease conditions (which admittedly closely paralleled what was then § 3(3) of the Act) to refuse these same joint rates to a competitive system made up of a series of connecting carriers.

This Court rejected the arguments of the lessees and affirmed the lower court's approval of the ICC order. In so doing, it dealt in only two sentences with the theory that "connecting" required a physical connection: "There is no warrant for limiting the meaning of 'connecting lines' to those having a direct physical connection with the Clinchfield. The term is commonly used as referring to all the lines making up a through route." 284 U.S. at 293. In a footnote, the Court supported this statement with a reference to the Carmack Amendment (24 Stat. 386, as amended, 54 Stat. 919, 49 U.S.C. § 20(11)), and the cases of *Galveston, H. & S. A. R. R.* v. *Wallace,* 223 U.S. 481, 489 (1912), and *Galveston, H. & S. A. R. R.* v. *Woodbury,* 254 U.S. 357, 358 (1920). This was a revealing footnote, because the Carmack Amendment employs a particularly loose concept of "connecting lines," as shown by the

two cases cited by the Court and others as well.[28] Moreover, through routes and joint rates are not necessary under the Carmack Amendment.[29]

The District Court in the instant case took this Court's reference to "through route" in *Atlantic Coast Line* to mean the same kind of "through route" defined in the later case of *Thompson* v. *United States*, 343 U.S. 549, 557 (1952). But this ignores the fact that *Thompson* was dealing with an entirely different problem—the establishment of through routes under §§ 1 and 15 of the Act. It also ignores the fact that even the *Thompson*-type "through route" was *not* present in *Atlantic Coast Line*. In *Atlantic Coast Line*, there was a "through route" only in the technical and unrealistic sense that tariffs were in effect which, *if* they had been continued after the completion of the new extension, would have been applicable over the complainants' lines. The important point is that the discriminating carriers (the lessees) had never purposefully held themselves out as offering through transportation service over the complainants' lines. On the contrary, at their earliest opportunity they had taken the only affirmative steps open to them (the filing of schedules to restrict the tariffs to their own lines) for the very purpose of *preventing* an offer of through service over any lines but their own.

Thus, this Court in *Atlantic Coast Line* did not mean—indeed, it could not have meant—that a "con-

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[28] *E.g.*, *Missouri, K. & T. R.R.* v. *Ward*, 244 U.S. 383, 387-388 (1917); *Minneapolis, S. P. & S. S. M. R.R.* v. *Metal-Matic, Inc.*, 323 F.2d 903 (8th Cir. 1963).

[29] *Baer Bros. Mercantile Co.* v. *Denver & R. G. R.R.*, 233 U.S. 479, 491 (1914); *United States* v. *Mississippi Valley Barge Line Co.*, 285 F.2d 381, 391-393 (8th Cir. 1960).

necting line" must either have a direct physical connection or be part of a through route in the sense that, as phrased in *Thompson,* "the participating carriers hold themselves out as offering through transportation service." If that had been the test in *Atlantic Coast Line,* it never would have been met, and that very case would have been decided differently. Instead, it seems clear from the facts and arguments in the case that what this Court meant by "through route" was simply a series of connecting carriers *available* for through transportation service—that is, a series of connecting lines which "usually and normally" would be expected to furnish through transportation service and which in fact would furnish such service if it were not for the discriminatory rates imposed upon them.

A further fact to be noted about *Atlantic Coast Line* is that even if the Court had meant its definition of "connecting lines" to be a restrictive or limiting one—which we dispute—the opinion certainly did not indicate that the "through route" had to encompass the discriminating carrier. Rather, the more logical interpretation is that the G & F and the Piedmont formed a "through route" connecting with the Clinchfield, and the G & F and Piedmont are comparable to the Western Pacific and the Great Northern in the instant case. See R. 700, 702.

Any thought that the *Atlantic Coast Line* ruling was solely one of interpreting a lease, without relation to discrimination under the Act, was dissipated by the subsequent ruling of the ICC in the same case. After this Court's decision, the same complainants and others sought in a new ICC proceeding to make applicable to themselves the joint rates already in effect over various routes, including between Greenwood and Augusta. Thus, some of the *same* parties, and the *same* inter-

change point, were involved as had been before. The ICC held not only that the lease conditions had been violated but that "the failure and refusal of defendants to permit complainants to participate between Augusta and Greenwood or Spartanburg in joint rates on traffic moving between southeastern territory, on the one hand, and Groups A, B, and C, on the other hand, while maintaining joint rates on like traffic in connection with the Charleston between Augusta and Spartanburg is a discrimination in rates and charges between connecting lines in violation of section 3(3) [now § 3(4)] of the act * * *." 191 I.C.C. 489, 500 (1933). This finding was made despite the lessees' arguments that the routes sought were "circuitous and uneconomical" and that "no representatives of shippers" had appeared to champion the relief sought. *Id.* at 495.

Thus, properly interpreted, the *Atlantic Coast Line* decision stands for the proposition that the very type of discrimination practiced in the instant case is a violation of § 3(4) of the Act. If, for some reason not apparent to us, *Atlantic Coast Line* is to be interpreted in any other way, it should be overruled.

We wish to make clear that in no way are we attacking here the basic definition of a "through route" as that term is used in the Act itself and as it has been defined by this Court in such cases as *Thompson* v. *United States, supra,* 343 U.S. 549, and *St. Louis Southwestern Ry.* v. *United States,* 245 U.S. 136, 139 (1917). But it must be remembered that the term appears only in certain specific sections of the Act—namely, 49 U.S.C. §§ 1(4), 5b(4), 6(1), and 15(3), (4), (8)—and it does *not* appear in § 3. The ICC and the District Court in this case not only treat the term as if it were a part of

§ 3, but assume further that the term was referred to in *Atlantic Coast Line* in some mechanical, ritualistic sense. We have shown that *Atlantic Coast Line* cannot be interpreted in that fashion.

The reason "through route" has been defined as it has in the past is because of the particular nature of the problem with which the Court has been faced when construing it. Virtually all of the through-route cases have involved a construction of §§ 1 or 15 of the Act. The outstanding example, of course, is the case relied on by the District Court, *Thompson* v. *United States, supra.*

In that case, the complainant asked the ICC to prescribe reasonable rates on grain from points in Kansas on the Missouri Pacific to an interchange at Concordia with the Burlington, and from Concordia to Omaha by way of the Burlington. Since it was the position of the complainant that a "through route" already existed from Kansas points all the way to Omaha by way of the Missouri Pacific and Burlington, it requested reasonable rates under § 1(4) of the Act, which provides that carriers shall establish reasonable through routes with other carriers "and just and reasonable rates, fares, charges, and classifications applicable thereto * * *." Both the ICC and the District Court found that a through route already existed, and that therefore the ICC could prescribe reasonable rates over it. But the record showed, and the ICC confessed in its argument before the District Court,[30] that *no* grain had ever passed all the way from the Kansas points to Omaha, and there was no evidence that through trans-

[30] Transcript of Record, *Thompson* v. *United States,* No. 513, October Term 1951, p. 224. See also the Memorandum for the United States in the same case, p. 10.

portation service had ever been offered. Since § 1(4), like §§ 15(3) and (4), requires an arrangement between the parties (even if implied) before the Commission can prescribe joint rates, this Court rightly held that no such arrangement had ever been formed. There being no through route, the ICC should have made the necessary findings under §§ 15(3) and (4) before establishing reasonable rates.

It is clear from all of these cases that if "through route" has any application at all in a § 3 case, the term carries no formalistic meaning (as it must, for example, in a § 15 case). Rather, it is a loose concept connoting physically available service.[31] And in testing discrimination, the courts look not so much to the intent of the carriers as to the practical effects of the rate structure.[32]

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[31] An example of the type of meaning often accorded the term appears in *The Virginian R.R.* v. *United States*, 272 U.S. 658 (1926). There, after stating that the Virginian had "never held itself out as equipped to carry coal to the West, or joined in joint rates to western markets" (*id.* at 664), the Court nevertheless concluded that § 15 was not involved because "Through routes to the West were already in existence. And there are through rates by combination. * * * *The fact that the combination rates were excessive constituted the only obstacle to the movement.*" *Id.* at 666; emphasis added. In other words, as in the instant case, routes were physically available, combination rates were in effect, but the discriminatory nature of the combination rates when compared with competing joint rates prevented the lines from being "commercially" open.

[32] Intent has often been ignored altogether. In *Matter of Through Routes and Through Rates*, 12 I.C.C. 163, 168 (1907), for example, the ICC said: "Here, then, it is shown that through routes to certain points may be indicated by the presence of through routes to other points on the same line, although the carrier may not have intended such result." The ICC has repeatedly looked to the practical facts of competition rather than to mechanical rules. *L. T. Barringer & Co.* v. *United States*, 319 U.S. 1, 7, 8 (1943).

The precise position of the ICC in the instant case, including its reliance on *Thompson,* was advanced and rejected in *American Barge Line Co.* v. *Alabama G. S. R. R.,* 296 I.C.C. 247 (1955), *aff'd,* 303 I.C.C. 463 (1958), *modified,* 306 I.C.C. 167 (1959), *rev'd sub nom. Arrow Transp. Co.* v. *United States,* 176 F. Supp. 411 (N.D. Ala. 1959), *aff'd sub nom. State Corp. Com'n of Kansas* v. *Arrow Transp. Co.,* 361 U.S. 353 (1960).

In that case, grain in some cases was sent by rail to Ohio River transit points and later shipped, again by rail, to specified interior points. This grain, called "ex-rail" traffic, carried proportional rates. The complaining barge lines claimed that they could not ship grain by barge to the same Ohio River ports, because if the grain were thereafter sent by rail to the specified points, it would carry local rail rates which were substantially higher than the proportional ex-rail rates. In other words, they argued, it was a discrimination in violation of § 3(4) for the ex-rail rates to be lower than the ex-barge rates.

The ICC, citing *Atlantic Coast Line R. R.* v. *United States, supra,* and *Thompson* v. *United States, supra,* concluded that § 3(4) applies only to "connecting lines," and that "In order for lines to be regarded as connecting, participation in through routes and through transportation is necessary." 296 I.C.C. at 251-253. The barge lines were not connecting because they "will not accept a shipment for through movement," nor "do the barge lines intend to publish through rates." *Id.* at 251. In fact, "there is no movement and no prospect of movement," and "there are no transfer facilities and no prospect of any * * *." *Id.* at 251-252. The barge traffic left the possession of the barge companies at the port and came into full possession of the owner

of the property. In some cases there were not even elevators available to transfer the grain from barge to rail car. *Id.* at 251. "As the complaining barge lines and defendants [railroads] do not form through routes, or handle through traffic via the Ohio River crossings, they cannot be regarded as 'connecting' within the terms of section 3(4)." *Id.* at 253; see also *id.* at 254, 255.[33]

Subsequent to that decision, *Dixie Carriers, Inc.* v. *United States,* 351 U.S. 56 (1956), was decided, and the ICC then reopened the *American Barge Lines* case and wrote a new opinion. 303 I.C.C. 463. In that opinion, although the facts were precisely the same as they had been before, the ICC ruled:

> In the prior report, we stated that in order for lines to be regarded as connecting, present participation in through routes and through transportation is necessary. We are now of the view that while present participation in such routes and transportation is not necessary, there must be a willingness to participate in through routes and through transportation before a carrier subject to either part I or part III of the Act may be regarded as a connecting carrier under section 3(4). [*Id.* at 468.]

The Court will note that this language was *not* restricted to water carriers; on the contrary, by referring to part I as well as to part III of the Act, the

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[33] The decision also dealt with § 3(4) charges involving Mississippi and Missouri River ports and reached similar conclusions (*id.* at 257-258), and with §§ 1 and 3(1) charges involving Tennessee River ports. *Id.* at 258-267. For purposes of simplicity, we treat here only those parts of the various decisions dealing with § 3(4) charges involving Ohio River ports.

ICC was giving its new conclusion the broadest possible application.

The ICC went on to hold, however, that the complaining barge companies still could not be regarded as "connecting carriers" because there were no "physical transportation facilities to form the connection 'between connecting lines,' and [no] use or operation of such facilities by the lines concerned in performing the service of interchange between them." *Id.* at 469. In other words, since in many cases it was physically impossible to transfer the grain from barge to railroad car, and since the barge lines were not prepared to construct such facilities, the barge lines were not "connecting."

> It seems clear that carriers which are unwilling to share the obligations commonly involved in arrangements for the interchange of traffic for continued movement are not in a position to urge successfully that they are the victims of discrimination under section 3(4). [*Id.* at 471.]

Here again, the Court should note the careful use of language. It was not that the *railroads* refused to enter into through arrangements that mattered to the ICC; it was only that the parties complaining of the discrimination had themselves refused to construct the facilities physically essential to through service.

This point was made quite clear when the ICC held further hearings and issued still another opinion. 306 I.C.C. 167. An important development had occurred in the meantime. At some points, "berthing facilities for barges are provided, the docks are served by rail tracks, and with the equipment available under the arrangements with stevedores it is possible for grain to be transferred to cars for rail switching or line-haul

movement." *Id.* at 170. In other words, although the barge lines and rail carriers still did not physically connect, and although they had not previously held themselves out as offering through service, it was now possible for the grain to reach a railroad car from a barge. Therefore, the ICC concluded:

> * * * Although admittedly there is no physical connection between barge and rail except at a few points, nevertheless we feel compelled by the rationale of the Court's decision[34] to treat the situation as though the barge and rail carriers were in fact 'connecting carriers' within the meaning of section 3(4). [306 I.C.C. at 172.]

The ICC still did not go the whole way, however. While it granted relief under § 3(4) to ex-barge traffic out of Ohio River ports because rail rates were there published as separately established proportional rates, it declined to grant similar relief to ex-barge traffic out of Mississippi River ports because rail rates were there published as single-factor through rates. 303 I.C.C. at 471. When this conclusion was presented to the District Court, it was rejected. 176 F. Supp. 411. The effect of such a decision, said the court, would be that railroads could freely discriminate against ex-barge traffic simply by using unpublished divisions of a through rate rather than published proportional

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[34] The ICC was here referring, actually, to two decisions: *ICC* v. *A. L. Mechling Barge Line*, 330 U.S. 567 (1947), and *Dixie Carriers, Inc.* v. *United States*, *supra*, 351 U.S. 56. In the *Mechling* case, the Court held that the ICC could not lawfully permit railroad carriers to charge higher rates on ex-barge grain than on ex-rail grain. In the *Dixie Carriers* case, the Court held that the ICC could not permit railroad carriers to apply local rates to the handling of ex-barge sulphur where ex-rail sulphur was handled on a division of a joint rate.

rates. Such discrimination could not be tolerated, for this Court had made clear that "Congress imposed a duty upon the Commission to eliminate discrimination in whatever guise or form it exists." *Id.* at 418.

The District Court continued: "The contention is advanced with apparent seriousness by some of the intervening defendants that Arrow is not a connecting carrier in relation to the railroads which serve the Tennessee River ports. This argument is wholly without merit." Since the grain could actually be gotten aboard the railroads after being carried in the barges, Arrow was "a connecting carrier of the outbound rail carrier" under § 3(4) of the Act (*id.* at 419), even though intermediate facilities were necessary for transfer of the grain from barge to train.

The court also rejected the argument that "there must be either a finding by the Commission that through barge-rail routes exist via the Tennessee River ports or a finding under section 15(3) of the act that the public interest requires that they be established." If a discrimination exists, said the court, "the Commission has a duty to cure it." *Id.* at 420. This Court affirmed the District Court without opinion. 361 U.S. 353.

The *American Barge Line* case, of course, dealt with barge traffic, and it is part of the National Transportation Policy to preserve the inherent advantages of such traffic. 54 Stat. 899, 49 U.S.C.A. note preceding § 1. But this Policy does not differentiate or distinguish barge cases from the instant one. On the contrary, while the National Transportation Policy is an added reason for erasing anti-barge rates, and provides the *measure* for the discrimination, the fact is that everything decided in the *American Barge Line* case relating

to discrimination is equally applicable where one group of railroads is discriminating against another. This is so not only because of the broad language in the *American Barge Line* opinions, but also because § 3(4) itself makes no distinction between rail and water carriage. That section, in fact, specifically makes applicable to water carriage, without differentiation, the provisions against discrimination that control rail carriage.[35]

We submit that the *American Barge Line* case stands for several propositions that are applicable here: where there is discrimination, (a) no direct physical connection is necessary in order for there to be "connecting line" status; (b) there need be no presently-existing through route *in the sense* that all carriers, including the discriminating carriers, have heretofore held themselves out as offering through service on a regular basis; but rather (c) there need be only a series of connecting carriers *capable* of, and *available* for, handling through service but prevented from doing so by the discriminatory rates.

Precisely the same propositions are supported by another decision of this Court, *Chicago, I. & L. R. R.* v. *United States,* 270 U.S. 287 (1926). In that case, the South Bend Railroad connected at Michigan City with the Lake Erie Railroad. The Lake Erie in turn connected with both the Michigan Central and Monon Railroads, and the Monon in turn connected with the Pere Marquette Railroad. Thus, the Michigan Central, Monon and Pere Marquette had no physical con-

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[35] " • • • As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water subject to chapter 12 of this title." 49 U.S.C. § 3(4).

nection with the South Shore; they connected with it only by way of an intermediate carrier, the Lake Erie. At one time, the Lake Erie had refused to join in reciprocal switching arrangements with the South Shore even though it had these arrangements with its other three connections. The ICC ordered that discriminatory practice stopped. 58 I.C.C. 647 (1920). Now, however, the South Shore was attacking the practice by the Michigan Central, Monon and Pere Marquette of having reciprocal switching arrangements each with the other but not with the South Shore. The ICC ordered an end to that discrimination as well (88 I.C.C. 525), and the District Court denied an injunction without opinion.

Repeatedly in their brief to this Court, the three discriminating carriers urged that there could not possibly be a violation of § 3(4) of the Act because (a) they had no direct physical connection with the South Shore, and (b) there was no joint arrangement with the South Shore and no service being performed with it. This was, in fact, the principal point urged on appeal.[36]

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[36] Brief for Appellants, *Chicago, I. & L. R.R.* v. *United States*, No. 150, October Term 1925. Typical of their statements, for example, were the following: "Unlawful discrimination can not exist unless there is a physical connection by the carrier alleged to be guilty of the discrimination with the railroad or shipper claiming to be discriminated against, or a service being performed for the railroad or shipper discriminated against through the medium of joint routes or joint rates." *Id.* at 21, 25. "We earnestly contend that as a matter of law, there can be no discrimination against the South Shore and its shippers by either the Pere Marquette, the Monon or the Michigan Central, because these carriers do not come in contact with the South Shore, nor have any joint arrangement with it and the intermediate line of the Lake Erie and Western, whereby they serve the South Shore and its shippers. There is neither service being performed by these three carriers in connec-

The United States in its brief took a very simple view of the case: "The fact that the Lake Erie & Western will be required, if reciprocal switching is maintained, to act as an intermediate carrier of traffic to or from South Shore is an accident of location and not a transportation difference."[37] The ICC in its brief also thought it clear that "Absence of physical connection between the South Shore and three of appellants can not, as a matter of law, justify the discrimination practiced against the South Shore and its shippers."[38] The ICC conceded that through rates and arrangements were not in effect between the three appellants and the South Shore as a carrier (*id.* at 23), but it considered this irrelevant. And in so arguing, it relied on cases dealing with *rates* and concluded that the same principles applied in a case involving switching arrangements. *Id.* at 27, 29.

This Court agreed with the United States and the ICC, and affirmed. It specifically stated that none of the three appellant railroads "had established through routes or joint rates with the South Shore to points

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tion with the South Shore, nor a physical contact with the South Shore by these three carriers, and therefore, an ability to perform the service." *Id.* at 28. "So in this case, how can it be said that the Pere Marquette, which does not come in contact with the South Shore, does not have any through routes or rates in effect with the South Shore, and does not in any manner serve that line, is unjustly discriminating against it?" *Id.* at 29. "This, we believe, illustrates the point that unlawful discrimination can not exist unless there is physical contact with the railroad or shippers claiming to be discriminated against, or service being performed for them through the medium of joint routes or joint rates." *Id.* at 31.

[37] Brief for the United States, *Chicago, I. & L. R.R.* v. *United States*, p. 6.

[38] Brief for Interstate Commerce Commission, *Chicago, I. & L. R.R.* v. *United States*, p. 25.

on its line. Each of them refused to enter into an arrangement with it for reciprocal switching. But each of [them] had an arrangement for reciprocal switching with each of the others. Thus the South Shore still remained at a disadvantage in handling traffic at Michigan City." 270 U.S. at 291. The Court therefore had no difficulty in finding that discrimination existed under § 3 of the Act and that it must be eliminated.

> * * * It is argued that, as a matter of law, a carrier cannot be guilty of unjust discrimination unless it is able by its own act to remove the inequality; that where there is no direct physical connection with the railroad alleged to be discriminated against, and no joint service is being rendered by the three steam railroads with the South Shore, there cannot, in law, be unjust discrimination, because the existing inequality can be removed only by the consent of a third party, the intermediate carrier.
>
> The order does not require the steam railroads to extend any service to the South Shore. It leaves them free to remove the discrimination by any appropriate action. * * * Direct physical connection with the carrier subjected to prejudice is not an essential. *St. Louis Southwestern Ry. Co.* v. *United States,* 245 U.S. 136, 144. Unjust discrimination may exist in law as well as in fact, although the injury is inflicted by a railroad which has no such direct connection. Wherever discrimination is, in fact, practiced, an order to remove it may issue; and the order may extend to every carrier who participates in inflicting the injury. *United States* v. *Pennsylvania R. R. Co.,* 266 U.S. 191, 197-9. [270 U.S. at 292-293.]

The same point is again illustrated by the *Denver & R. G. W. R. R.* case.[39] There the Union Pacific in most instances kept its long haul between west and east. The Rio Grande, which ran only from Ogden eastward to Denver, was attempting to force the Union Pacific to enter into joint rates which would allow the Rio Grande to participate in transcontinental traffic. In all respects but one, the case is distinguishable from the instant one, because (a) the Rio Grande asked the ICC to establish joint rates under § 1 on through routes which it claimed were already in effect,[40] and (b) the Rio Grande competed with a small section of a transcontinental line entirely maintained by the Union Pacific.[41] However, in one respect the two cases are similar. On some products the Union Pacific interchanged at Ogden with the Bamberger Railroad and accorded that railroad joint rates to and from various points, including Salt Lake City. Even though there were no through routes in effect on a competing stretch via the Rio Grande, the ICC held that the Union Pacific was violating § 3(4) by not joining in similar rates with the Rio Grande. 287 I.C.C. at 658-659. The Dis-

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[39] *Denver & R. G. W. R. R.* v. *Union Pacific R. R.*, 287 I.C.C. 611 (1953), *remanded sub nom. Denver & R. G. W. R. R.* v. *United States*, 131 F. Supp. 372 (D. Colo. 1955), *rev'd in part sub nom. Union Pacific R. R.* v. *United States*, 132 F. Supp. 72 (D. Neb. 1954), *aff'd and rev'd in part*, 351 U.S. 321 (1956).

[40] The ICC held that such routes were not in effect, but that the public interest required them under § 15. Therefore, the ICC established such routes, and joint rates over them, for many products.

[41] The point is illustrated by a drawing in the Brief for the United States, the Interstate Commerce Commission, and the Secretary of Agriculture, *Denver & R. G. W. R. R.* v. *Union Pacific R. R.*, Nos. 117, 118, 119, 332, 333 and 334, October Term 1955, p. 60.

trict Court squarely held that "Section 3(4) clearly prohibits such discrimination."[42]

Thus, a "through route" in the sense that the term is used in the Act itself[43] is not essential to a finding of discrimination under § 3(4). And we have already shown that a physical connection is not necessary. The irrelevance of a physical connection was established by the lower courts soon after the passage of the Act. In *Augusta S. R. R.* v. *Wrightsville & T. R. R.*, 74 Fed. 522 (S.D. Ga. 1896), under what is now 49 U.S.C. § 2, the Augusta Southern Railroad alleged discrimination because the Wrightsville & Tennille Railroad charged it higher prices for transporting continuing traffic than it did the Central of Georgia Railway. The Wrightsville replied in part that it did not connect with the Augusta—that it joined with that line only over the right of way of the Central. The court dismissed this as of no moment.

The same point was established by this Court almost 50 years ago, when a carrier claimed that it could not be guilty of a discrimination against a locality because it had no physical connection with that locality. The Court replied: "Localities require protection as much from combinations of connecting carriers as from single carriers whose 'rails' reach them." *St. Louis South-*

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[42] 132 F. Supp. at 81. While this Court had no occasion to consider most contentions raised under § 3(4) (see 351 U.S. at 335), it did approve the holding of the District Court relating to the Bamberger Railroad. 351 U.S. at 335 n. 7.

[43] Even within the Act, the term is a flexible one. See *Denver & R. G. W. R. R.* v. *Union Pacific R. R., supra*, 351 U.S. at 327. It does not necessarily entail joint rates or uninterrupted carriage. *United States* v. *Capital Transit Co.*, 325 U.S. 357, 363 (1945). See also *St. Louis Southwestern Ry.* v. *United States*, 245 U.S. 136, 139-140 n. 2 (1917).

western Ry. v. *United States,* 245 U.S. 136, 144 (1917). Time and again, when the parties discriminated against have been carriers instead of localities, the courts have reached the same conclusion.[44]

Yet appellees' entire argument is that because they do not physically connect with Western Pacific at Portland, and because they have refused in the past to grant the Bieber route the same preferential rate accorded the competing Southern Pacific route, they cannot be compelled to cease the discrimination. This latter argument is analogous to the one made by the Fernwood & Gulf Railroad in *United States* v. *Illinois Central R. R.,* 263 U.S. 515 (1924). There, the Fernwood & Gulf was an independent line connecting the cities of Knoxo and Fernwood. At Fernwood, it joined the Illinois Central for shipment of traffic to northern points. The rates of the Illinois Central from points on its own lines, from points on its branch lines, and from points on other connecting lines were higher than the combination of rates from Knoxo to northern cities via the Fernwood & Gulf and the Illinois Central through Fernwood. The Fernwood & Gulf argued that it was not subject to a § 3 order because it was not a party both to the preferential rate and the higher rate; it participated only in the higher rate. It also argued that the Illinois Central was not subject to a § 3 order because Knoxo was not on Illinois Central's lines, and therefore Illinois Central was not in a position to remove the discrimination.

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[44] In addition to the cases already discussed in this brief, see *Atchison, T. & S. F. R. R.* v. *Chicago,* 240 F.2d 930, 937 n. 17 (7th Cir. 1957), *aff'd,* 357 U.S. 77, 86 (1958); *Texas & Pacific Ry.* v. *United States,* 42 F.2d 281, 285 (S.D. Tex. 1930), *rev'd on other grounds,* 289 U.S. 627, 648-649, 669-670 (1933).

The ICC, in its brief to this Court, had a quick answer: "This question has been before the Commission literally hundreds of times and the Commission has always held that it was not without power to remove a prejudice arising from the improper relationship of two rates, when one or more carriers were parties to both rates, simply because one of the carriers which participated in transportation under the one rate did not participate in transportation under the other rate." [45]

This Court agreed. "Proceedings to remove unjust discrimination are aimed directly only at the relation of rates." 263 U.S. at 520. It made no difference that each line did not participate in both rates. *Id.* at 520-521. It made no difference that the discrimination was practiced by Illinois Central solely to increase its own business. *Id.* at 523-524. It made no difference that the rates were combination rather than joint rates. *Id.* at 527. The discrimination still had to cease.

And so here, the fact that appellees have heretofore refused to join in equal rates cannot disguise the ultimate fact that the rates granted to one competing line discriminate against the other. The Commission has the power and the duty to erase the discriminatory rates.

That the removal of discrimination does not rest upon physical connection or previous offers of through services by the discriminating carriers is further illustrated by *Pennsylvania Co.* v. *United States,* 236 U.S. 351 (1915). That case, although a switching case, was decided under § 3, and its rationale is equally applicable

[45] Brief for the Interstate Commerce Commission, *Wyoming Ry.* v. *United States,* No. 38, October Term 1923, pp. 18-19, *decided sub nom. United States* v. *Illinois Central R.R., supra.*

here. The Rochester Railroad operated its own train to Butler, Pennsylvania, where its cars were moved (by virtue of a lease arrangement) over the lines of the Allegheny Railroad to a station within 1000 feet of the Pennsylvania Railroad's terminal facilities in New Castle.[46] The Pennsylvania made its switching facilities available to three other carriers, because these three in turn offered reciprocal arrangements which were advantageous to the Pennsylvania. But because the Rochester could not offer such reciprocal arrangements, the Pennsylvania completely refused to handle the Rochester's cars when they passed over the Allegheny's lines and came to a stop within 1000 feet of the Pennsylvania's facilities. There were no through routes or joint rates as between the Pennsylvania and Rochester; there was, in fact, no service at all.[47]

The Rochester asked the ICC (a) to establish through routes and joint rates under § 15 on traffic tendered to the Pennsylvania, and (b) to forbid under § 3 the discrimination practiced by the Pennsylvania. The ICC found it unnecessary to establish through routes and joint rates, because it ordered the discrimination halted.

This Court did not give the slightest heed to the fact that the Rochester's cars had to pass over another carrier's lines in order to reach New Castle, or that even there the cars stopped just short of the Pennsylvania's facilities. Nor did the Court pay any attention to the lack of a through route, except to treat it

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[46] *Id.* at 356, 359; Transcript of Record, *Pennsylvania Co.* v. *United States,* No. 591, October Term 1914, pp. 21-22.

[47] 236 U.S. at 356-357, 359; Brief for the United States, *Pennsylvania Co.* v. *United States, supra,* at p. 4.

as evidence of the discrimination itself. The Court held that there was discrimination in fact, and that the reasons for the discrimination were irrelevant. 236 U.S. 351.

Repeatedly, the Court has made clear that a direction to stop discriminating is not to be confused with the establishment of through routes and rates. For the Commission to establish routes and rates as such, it must comply with §§ 1 and 15, so that there must be findings that the parties themselves affirmatively or impliedly entered into certain arrangements, or that the public interest requires such arrangements. But an order to stop discriminating under § 3 can be complied with in various ways. The discriminating carriers can establish equivalent rates with the parties discriminated against, they can cancel their rates with the favored parties, or they can take other steps to see that the discrimination ceases.[48] As the Court said in *United States* v. *Pennsylvania R. R., supra,* 266 U.S. at 199:

> It is true that an extension of trackage rights, an enlarged common use of terminals, or the establishment of through routes and joint rates, or the withdrawal of them, could not be ordered except upon the findings and conditions prescribed in the act. But the order complained of does not require any such thing. It requires only that the carriers shall desist from a practice which involves such

[48] *E.g., New York* v. *United States,* 331 U.S. 284, 340-343 (1947); *L. T. Barringer & Co.* v. *United States, supra,* 319 U.S. at 10-12; *Texas & Pacific Ry.* v. *United States,* 289 U.S. 627, 650 (1933); *United States* v. *Illinois Central R.R.,* 263 U.S. 515, 520-521 (1924); *American Express Co.* v. *South Dakota ex rel. Caldwell,* 244 U.S. 617, 624-625 (1917). See also the Motion of the United States and Interstate Commerce Commission to Affirm, *Thompson* v. *United States,* No. 513, October Term 1951, p. 11.

use as has resulted and will result in the undue prejudice found. The order leaves them free to remove the discrimination by any appropriate action.

The ICC has pointed out that a few isolated shipments over a route cannot establish a through route for purposes of § 15, because otherwise a shipper or carrier could avoid the restrictions in that section simply by making a shipment or two over the route which he seeks to open commercially.[49] We agree with that analysis. But the coin has two sides, and the other side is that a carrier cannot grant favored rates to one line and avoid granting them to competing lines by the simple expedient of refusing to join the competing lines in offering through service. That is precisely what appellees are attempting to do here. Surely if discrimination may be practiced *by* "a combinaiton of connecting lines,"[50] discrimination may also be practiced by one or more railroads *against* "a combination of connecting lines." Certainly the fact that the carriers making up the Bieber route compete with the Southern Pacific route is no *excuse* for discriminatory rates.[51]

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[49] *Denver & R. G. W. R. R.* v. *Union Pacific R. R., supra,* 287 I.C.C. at 619.

[50] *Texas & Pacific Ry.* v. *United States, supra,* 289 U.S. at 648-649; *Central R. R. of New Jersey* v. *United States,* 257 U.S. 247, 259 (1921); *Omaha Grain Exchange* v. *United States,* 194 F. Supp. 929, 935 (D. Neb. 1961).

[51] Very early in its history, the ICC specifically rejected the contention that "it is not unduly discriminatory, under section 3 of the act, for an initial carrier to agree upon joint through rates with one of several connecting carriers which are competitors among one another." *Pacific Navigation Co.* v. *Southern Pacific Co.,* 31 I.C.C. 472, 480 (1914). See also *Seaboard Air Line Ry.* v. *United States,* 254 U.S. 57, 62 (1920).

We have shown that nothing in the legislative history of the Act and nothing in the cases inveighs *against* our interpretation of "connecting lines." We go further. The legislative history and the cases affirmatively support the position we take. For if one fact is crystal clear, it is that Congress intended in § 3 to outlaw discrimination in all its forms. The United States flatly told this Court over 30 years ago that "Section 3 forbids discrimination of any kind whatsoever."[52] The Court agreed then, and it has agreed ever since.

> The legislative history of the Interstate Commerce Act shows clearly that the evil of discrimination was the principal thing aimed at. * * * This court has said that the language of the Act "is certainly sweeping enough to embrace all of the discriminations of the sort described which it was within the power of Congress to condemn." [*Louisville & N. R.R.* v. *United States,* 282 U.S. 740, 749-750 (1931).]
>
> [Section 3] forbids any undue or unreasonable preference or advantage in favor of any person, company, firm, corporation or locality * * *. [*Pennsylvania Co.* v. *United States, supra,* 236 U.S. at 361.]
>
> Wherever discrimination is, in fact, practiced, an order to remove it may issue * * *. [*Chicago, I. & L. R.R.* v. *United States, supra,* 270 U.S. at 292-293.]
>
> The principal evil at which the Interstate Commerce Act was aimed was discrimination in its various manifestations. [*New York* v. *United States, supra,* 331 U.S. at 296.]

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[52] Brief for the United States, *Wyoming Ry.* v. *United States,* No. 38, October Term 1923, p. 10; Brief for the United States, *United States* v. *Illinois Central R. R.,* No. 40, October Term 1923, p. 11, both *decided sub nom. United States* v. *Illinois Central R. R.,* 263 U.S. 515 (1924).

> Section 3 outlaws discrimination in all its forms. [*Dixie Carriers, Inc.* v. *United States. supra,* 351 U.S. at 60.]

See also *Kansas City Southern Ry.* v. *C.H. Albers Com'n Co.,* 223 U.S. 573, 597 (1912); *Houston, E. & W. T. Ry.* v. *United States,* 234 U.S. 342, 355-356 (1914); *United States* v. *Pennsylvania R.R., supra,* 266 U.S. at 197-199; and *A. L. Mechling Barge Lines, Inc.* v. *United States, supra,* 376 U.S. at 384-385.

The cases and legislative history to one side, the practical effects of the holding below should be carefully noted. If a railroad like Western Pacific competes as an intermediate carrier rather than by means of a direct physical connection at the common interchange, the District Court takes the position that before that railroad can challenge discriminatory rates, the discriminating carriers must previously have held themselves out as offering through service over the intermediate railroad's route. What this means in practical effect is that where a discrimination consists of through rates *at different levels,* it can be attacked, but where the discrimination consists of one through rate and a refusal to grant the other through rate at all, it cannot be attacked. To illustrate: if appellees had voluntarily joined the Bieber route in through rates which were lower than the rates now prevailing and yet still higher than those maintained with Southern Pacific, the District Court would not have questioned Western Pacific's right to challenge the discriminatory practices under § 3(4). Yet the District Court denies the right of Western Pacific to sue in this case, even though the rates are *more* discriminatory than in the illustration above.

The irrationality of the District Court's conclusion is again pointed up by the fact that if a few physical

circumstances happened to be different, the District Court would have granted relief, even though the practical facts of discrimination would have been the same. For example, if the Western Pacific had been the northern instead of the middle link in the Bieber route, the District Court would have allowed it to sue, because it would have physically connected with appellees. See R. 703. And if appellees had discriminated *in favor of* Western Pacific instead of *against* it, Southern Pacific could have sued, because it too connects with appellees. Yet because Western Pacific happens to be the victim of the discrimination and the middle link in a chain of carriers, the District Court says it lacks standing. This, we suggest, simply makes no sense, and certainly is not required by the Act.

The appellees have not previously held themselves out as offering through service over the Bieber route for only one reason: to preserve the discriminatory rates that are attacked in this case. Their discrimination thus serves not only as the point of attack but as its own defense. Surely that cannot be the intent of Congress. Rather, we agree with what the Southern Pacific said recently in another case about the National Transportation Policy's requirement of fostering sound economic conditions and promoting adequate service.[58] Repeatedly in that case, Southern Pacific stressed the need for preserving "the present competitive strengths" of the Bieber and Southern Pacific routes (*id.* at 4), requiring "equal treatment" for each connection (*id.* at 5), assuring connecting carriers "the same treatment" (*ibid.*), and carrying out

[58] Reply of Intervenor Southern Pacific Company to Exceptions, served March 11, 1945, *Great Northern Pacific & Burlington Lines, Inc., etc.*, Finance Dkt. Nos. 21478, 21479, 21480, p. 4.

the intent of Congress "that the exercise of such power to discriminate is against the public interest." *Id.* at 6. These are precisely the needs we are attempting to make real in the instant case. Western Pacific is an established carrier offering its service over an established physical route. Action which frustrates the full, fair and efficient utilization of existing facilities clearly violates the legislative purpose as expressed in the National Transportation Policy. This is particularly true where the action is discriminatory in nature.

Here, we have not only a lack of utilization but serious injury as well. Distinct areas of injury to Western Pacific are its loss of line-haul traffic which it originates or terminates; loss of important industries that, absent the complained-of rate discrimination, would have located on its facilities and produced revenue traffic to this and other territories served by Western Pacific; and complete foreclosure from the opportunity of offering its service in connection with the movement of approximately 25,000 carloads of normally competitive traffic presently monopolized by Southern Pacific. R. 90. The injury to shippers, the public and the Pacific Coast has already been detailed above.

In a recent decision, the ICC held unequivocally that Western Pacific must remain an independent carrier so that it can perform as an effective competitor of Southern Pacific via the Bieber gateway and elsewhere. In issuing its mandate, the ICC stated:

> Similarly, the Washington Commission's support of the Santa Fe proposals is based on its desire to preserve competing routes between California and the Pacific Northwest. It contends that control of Western Pacific's route through the Bieber, Calif., gateway by Southern Pacific would deprive

shippers of a choice of carriers on movements between the Pacific Northwest and points to the south and southeast.

* * *

If these coordination savings * * * are weighed against the possible losses in traffic and revenue by most of the intervening carriers; the losses in car rentals by the Fruit Express and Bangor Road; the loss of employment by employees of the affected carriers; *the possibility of downgrading the Bieber or central routes for overhead traffic movements with resulting hardships upon shippers originating or terminating traffic on these routes; and the elimination of one of the active competitors for rail traffic in the western region;* it is clear that the adverse effects which would flow from the approval of any of the control applications might exceed any benefits which would accrue to the public therefrom.[54]

Thus, the ICC has made it clear that the major reason for Western Pacific's very existence is to serve the public through its competitive efforts. Manifestly, such a mandate requires the tools of performance before it can be followed. Competitive rail service can survive the absence of one or even more of the various tools of the trade, but not the presence of discriminatory rates via common connections. Nowhere is that more graphically portrayed than in the situation now prevailing on the Pacific Coast of the United States.

Wherever equal rates and hence equal competitive opportunity exist, the Bieber route has performed most efficiently and economically, earning the respect and support of the shipping public. And this despite

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[54] *Southern Pacific—Control—Western Pacific Co., supra* n. 8, slip opinion pp. 23, 26-27; emphasis added, footnote deleted.

the relative size and wealth of the Southern Pacific. Requiring Northern Pacific and Union Pacific to afford each of their common connections equal rates would do no more than force Southern Pacific to face the same competition it already faces on traffic moving to or from Great Northern points in the same area. More importantly, regardless of what the effect may be on Southern Pacific, § 3(4) and the National Transportation Policy both require that this discrimination be brought to an end.

II. THE CIRCUMSTANCES AND CONDITIONS ARE SIMILAR AND REQUIRE EQUAL TREATMENT

The ICC held that "Even if the complainants were connecting carriers, the evidence of record does not establish the similarity of circumstances and conditions which justifies equality of treatment." R. 643. Although we believe we clearly established before the District Court that this finding was erroneous, it was not necessary for the court to pass on the point, since it concluded that Western Pacific was not a connecting line. R. 731 n. 3. As we pointed out in our Jurisdictional Statement (p. 6 n. 4), if this Court agrees with us that Western Pacific is a connecting line, a further remand is not necessary, because the record fully and unequivocally establishes a similarity of circumstances which requires equal treatment, even assuming that such similarity is necessary under the particular circumstances of the instant case.

We start with the obvious but important fact that whatever alleged unfavorable physical conditions might be inherent in the Bieber route have existed since the ICC authorized its construction for the very purpose of competing with the allegedly more favorably-en-

dowed Southern Pacific route.[55] Western Pacific's "unfavorable" operating conditions did not deter the ICC from authorizing the operation of the Bieber route—although these conditions were specifically considered by the ICC at the time[56]—nor have these conditions prevented the Bieber route from successfully competing wherever rates have been equalized. R. 31-35, 403, 404.

Moreover, the ICC's conclusion that Bieber route conditions are relatively unfavorable is founded upon a patently erroneous interpretation of uncontroverted facts in the record.

The ICC, for example, erroneously treated the Southern Pacific routes as a single line and conversely cast an unfavorable light upon the multi-line nature of the Bieber route. The discriminatory rates, however, are

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[55] The District Court was clearly troubled by this point during oral argument:

> Judge Merrill: I think what my brothers up here are troubled by is that the Commission in determining a lack of similarity of circumstances seems to have dealt overwhelmingly with the situation south of Portland rather than the situation north of Portland to which the Western Pacific would like to get access, and that as far as the situation south of Portland is concerned, the route was created for the purpose of competing with the Southern Pacific. It seems to be doing so vigorously, and how can it consistently be said under these circumstances that dissimilarity of circumstances south of Portland is a valid consideration in denying access to the Northwest? They are competing vigorously?
>
> Mr. Ginnane [Counsel for the ICC]: They are competing.
>
> Judge Merrill: They are created for the purpose of doing so. Now they are denied the opportunity of competing to the north because the circumstances somehow are dissimilar, even though any such dissimilarity is being overcome in a very competitive fashion. [R. 699.]

[56] *Great Northern Ry. Co. Construction, supra,* 166 I.C.C. at 39.

also applicable over joint Southern Pacific-Santa Fe routes via the northern California junctions of those carriers. R. 22, 30. Much of the Bieber route's alleged circuity, as compared to the Southern Pacific's single-line route, is in the Santa Fe segment extending south from Stockton to Los Angeles, and the same distance factor is present in the joint Southern Pacific-Santa Fe route. R. 329. Further, the discriminatory rates require the same multi-line handling on all traffic originating or terminating at Western Pacific's exclusive points,[57] since this traffic must be moved by Western Pacific to or from the nearest junction point before being carried by Southern Pacific. R. 26, 27. Multi-line handling is also involved at points served in common by both lines whenever the traffic originates or terminates at any industry which requires Western Pacific's switching service to or from Southern Pacific. R. 26, 27, 358. These are not uncommon or occasional occurrences, as evidenced by the fact that approximately 2250 to 2500 carloads of traffic each year are diverted from Western Pacific to Southern Pacific at plants or points served by Western Pacific alone. R. 95-96. All of this traffic, if retained by the carrier directly serving the facilities, would move to or from Portland on exactly the same number of railroads that are now required by the discriminatory rates.[58]

The ICC also found some significance in the Bieber route's slightly greater circuity between Los Angeles

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[57] "Exclusive points" as used here means California points served by Western Pacific but not by Southern Pacific.

[58] The same situation applies in the northwest where, as at Seattle, a shipper located on Northern Pacific can use the Bieber route by having Northern Pacific switch the car to Great Northern for handling to Portland, thence the Bieber route south. R. 130. If the routes south of Portland were equalized, only one carrier would handle the traffic between Seattle and Portland.

and Portland as compared to the shorter Southern Pacific route. There is no greater circuity on the Bieber route now than when it was constructed in 1931. In initially authorizing the construction and later in deciding to allow the Bieber route to reduce its rates to the same level as the Southern Pacific's reduced rates (to meet water competition), the ICC determined that the Bieber route's comparative circuity was "slight" and did not justify putting the carrier in a less favorable competitive position.[59]

Moreover, there is no direct correlation between length of railroad and quality of competitive service. For example, the witness for the Yakima Fruit Growers Association testified:

> * * * It frequently happens that we get as fast service from Yakima to Chicago, a distance of over 2,000 miles, as we get over the much shorter distance from Yakima to Los Angeles.
>
> At present our schedule to Chicago is fourth evening for fifth morning sale. This is a guaranteed schedule. The Northern Pacific-Southern Pacific route at present is sixth morning delivery to Los Angeles. The piggy-back schedule is fourth day arrival in Los Angeles for fifth morning sale. The Union Pacific schedule to Los Angeles is third day delivery.
>
> It is my firm conviction that it is the existence of railroad competition which is responsible for

[59] *Pacific Coast Fourth Section Applications,* 190 I.C.C. 273, 290 (1932): "On the whole record we conclude that it would be in the public interest to permit this newly built route as far as the law allows to meet the water competition to the same extent as we permitted the Southern Pacific to meet the same competition * * *. We recognize the fact that the costs of handling traffic over *slightly circuitous* routes is generally not substantially in excess of that over the direct routes." (Emphasis added.)

the better service to the east. I firmly believe that if we had two competitive routes to California, the service would be immeasurably improved. If the Commission grants the relief sought by the Western Pacific and the rates become applicable, we would certainly utilize that service.

* * *

Q. Mr. Lindgren, you have testified that the Union Pacific schedule to Los Angeles is third day delivery. How is that traffic routed?

A. Through Salt Lake.

* * *

Cross examination.

* * *

Q. And do the same rates apply by way of the Union Pacific via Salt Lake City to Los Angeles, as applied by Portland and Southern Pacific?

A. Right.

Q. Well, then, why is it that you ever make shipments via Portland-Southern Pacific rather than Union Pacific to Los Angeles?

A. With a Union Pacific origin?

Q. Yes, with a Union Pacific origin.

A. We don't ship that way. We ship through Salt Lake. [R. 152-154.]

The present Union Pacific route between Los Angeles and the States of Oregon and Washington is the same one referred to in the Commission's decision authorizing creation of the Bieber route,[60] and the extent of its

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[60] "Generally speaking, the only part of California which now has the benefit of rail competition to or from points in Oregon and Washington is a small area around Los Angeles served by Union Pacific." *Great Northern Ry. Co. Construction, supra,* 166 I.C.C. at 34.

comparative circuity is graphically portrayed in the various maps in the record. R. 329, 466. The Union Pacific route is patently far more circuitous than the Southern Pacific and Bieber routes between the same points.

The ICC's error in the comparison of transit times (based on schedules rather than performance) was two-fold. First, although the evidence is directly to the contrary (R. 146, 147), the ICC accepted Northern Pacific's contention that the elimination of the present discriminatory practices would force Northern Pacific, in serving points east of the Cascade Mountains, to move Bieber traffic via a circuitous routing through Auburn (north of Portland and west of the Cascades) and then to points east. Northern Pacific interchanges with both Southern Pacific and the Bieber route in the very some terminal in Portland. Traffic interchanged with Southern Pacific, moving to or from Northern Pacific points located east of the Cascades, is carried over the lines of the Spokane, Portland & Seattle Railway (a subsidiary of both Northern Pacific and Great Northern systems) for "operating convenience" regardless of the routing shown on the bill of lading. R. 275. The Bieber-routed traffic interchanged at Portland need not and should not be handled in any different manner.[61]

The ICC also ignored the testimony that *present* schedules (which formed the sole basis for the Com-

[61] Since 1952 the pipe traffic moving over the Bieber route to points in the northwest Pacific located east of the Cascades has not been treated any differently than Southern Pacific traffic interchanged at Portland. The record shows a complete absence of the slightest criticism regarding the handling of the pipe traffic via the Bieber route.

mission's comparison) are based upon the fact that the only volume traffic now moving is in conjunction with Southern Pacific. Thus, a Union Pacific witness stated:

> We have made our schedules to conform with the schedules of the Southern Pacific. Since there is no traffic of any consequence whatever coming to us at Portland from the Bieber route, obviously we have no schedule set up with the Bieber route. [R. 263.]

While not predicating any exact findings on the subject, the ICC noted with apparent approval the contention of Union Pacific that the cost of its interchange at Portland is more excessive when the Bieber route is involved. R.638. Actually, the alleged cost comparisons do not even pretend to compare like with like. The Southern Pacific-Union Pacific interchange costs purport to be nothing more than the out-of-pocket costs for the engine crews involved in the service. R. 237. The alleged greater costs involved in a Bieber route interchange are predicated upon Union Pacific's share of the *total fully distributed* cost of operating the Northern Pacific Terminal Company (of which Union Pacific is part owner) and are based upon a *total ownership* cost responsibility bearing no relation whatever to the number of Bieber-routed cars moving through that facility, now or in the future. R. 241-244, 249. The fact is that an increase in the flow of traffic through the Terminal facilities must have the effect of *lessening* the per car cost of the individual owners.

Even assuming *arguendo* that Union Pacific's cost comparison was legitimate, the ICC has long ruled that differences in interchange arrangements are within

the operating control of the carriers, and hence should be worked out between the parties.[62] Western Pacific's annual revenue losses on traffic which either originates or terminates on its line but which must be surrendered to Southern Pacific for line-haul handling amounts to approximately $360,000, while the *alleged* extra cost to Union Pacific in handling the same 2500 cars via the Northern Pacific Terminal Company would approximate $7,500. R. 31, 226, 229. If Western Pacific were able to handle only an extra 10,000 cars annually (less than half of the potentially competitive traffic), its revenues thereon would be well in excess of $1,250,000 annually, from which any legitimate increased switching cost could and would be paid as increased divisions.[63]

Union Pacific's attempt to justify the present discriminatory practices on the basis of alleged differences in interchange conditions with common connections is completely rebutted by the testimony of its own

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[62] *Atlantic Coast Line R. R.* v. *Southern Ry. Co.*, 321 I.C.C. 283, 291 (1963); *Kansas City S. Ry.* v. *Louisiana & A. Ry.*, 213 I.C.C. 351, 359 (1935). See also *New York, C. & S. L. R. R.* v. *New York Central R. R.*, 314 I.C.C. 344, 345 (1961), where the ICC stated: "A carrier cannot arbitrarily provide points of interchange which ignore the basic rights of others. This is a matter to be arranged between the parties. Interchange agreements should be reached by consultation, exploration of mutual benefits and negotiation of differences."

[63] Union Pacific's Freight Traffic Manager testified on cross-examination:

> Q. If the divisions that have been offered to you on the same basis as what you are getting from the Southern Pacific were enlarged enough to make up for these alleged additional costs on the interchange, would that make a difference in the attitude of the Union Pacific?
>
> A. It might. [R. 221.]

Freight Traffic Manager. He confessed after some prodding that there are "not many" instances where Union Pacific gives through rates to one of its connections and denies them to another, whether or not conditions are the same. R. 220. In fact, he could not think of a single such instance other than the one involving the Bieber route, nor was any revealed by the rest of the record.

Finally, the ICC erroneously found that new routes would result from the elimination of the discriminatory rates and would require hauls in a general direction opposite to the direct movement. The fact of the matter is that no new physical routes would result. The existing facilities will handle the traffic—the only change will be in the rates applicable thereover, and consequently in the shippers' transportation costs. R. 221. Union Pacific and Northern Pacific will handle this traffic exactly the same distance north of Portland regardless of which route handles the traffic south thereof. The mere fact that the Bieber-routed traffic destined east of the Cascades would be carried west by the Bieber lines into Portland before it is handled by the Northern Pacific or Union Pacific does not impose upon *any* carrier a so-called "backhaul" obligation. *Ibid.*

The best possible evidence of similar conditions is the choice made by shippers between competing routes once these routes are commercially open. In this case, witnesses representing hundreds of individual shippers stated time and again that they would use the Bieber route if the discriminatory rates were erased. *E.g.*, R. 102-103, 107, 113, 119, 122, 126, 128, 130-131, 139, 149, 153, 155, 159, 162, 166-167, 251-252. And Northern Pacific's own General Freight Agent admitted that elimi-

nating the discrimination would "have the effect of dividing the traffic between the two lines, the Southern Pacific and the Western Pacific * * *." R. 284. If the Bieber route is circuitous or otherwise dissimilar, why would its commercial opening result in an immediate diversion of traffic from the theoretically more advantageous competing route?

Thus, the alleged lack of similar circumstances and conditions posited by the ICC simply will not withstand record analysis. This Court should so rule and should direct that the ICC enter an order requiring appellees' rate discriminations to cease.

CONCLUSION

The construction of the Bieber route was a competitive necessity in 1931. Since that time, the increasing consolidation of railroad services and facilities throughout the country; the economic growth of the Pacific area; the current and growing needs of shippers; the fact that "* * * existing competition by non-rail modes of transportation is not as effective in this area as in most areas * * *";[64] the sustained throttling of Western Pacific's competitive efforts; the carrier and public damage thereby inflicted; the economic waste patently inherent in preventing the full and fair utilization of already-existing facilities, all point to the need at the very least of bringing railroad competitive services to their irreducible minimum. This minimum requires that shippers have a practical choice between two fully available physical routes. It requires that one route, which, as the ICC has con-

[64] *Southern Pacific—Control—Western Pacific Co., supra* n. 8, slip opinion p. 19.

ceded (Motion to Affirm, p. 3), the appellees have attempted to keep "commercially closed," be opened.

The Western Pacific position rests solidly upon the proposition that any proceeding under § 3(4) requires both "connecting line" status and proof of different treatment between connecting routes operated under essentially similar conditions.[65] Therefore, no extensive litigation can, or will, follow a ruling that Western Pacific is a connecting line. Lines not operating under conditions essentially similar to those applicable over the preferred route will not be able to obtain any new or novel relief not contemplated by Congress or traditionally afforded by the courts. Connecting routes that find their competitors enjoying the benefits of discriminatory rate practices not justified by significant physical and operating differences will be able to challenge such discriminatory practices. This, we submit, is full compatibility between the statutory scheme and the relief sought by Western Pacific.

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[65] The ICC's General Counsel conceded in oral argument before the District Court that if Western Pacific is a connecting line and there is similarity of circumstances, the discrimination must be stopped. R. 697.

As one shipper pointedly put it (R. 140): "* * * there should be no delay in fulfilling the obligation to provide full service via the Bieber Gateway."

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 12

WESTERN PACIFIC RAILROAD COMPANY, ET AL.,
APPELLANTS

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the three-judge district court (R. 730–734) is reported at 230 F. Supp. 852. The opinion of the Interstate Commerce Commission (R. 623–645) is reported at 316 I.C.C. 795.

JURISDICTION

The judgment of the three-judge district court was entered on June 22, 1964 (R. 730). Appellants filed a notice of appeal to this Court on August 17, 1964, and a jurisdictional statement on October 16, 1964. Probable jurisdiction was noted on January 18, 1965 (R. 742; 379 U.S. 956). Jurisdiction to review the

decision of the district court is conferred by 28 U.S.C. 1253 and 2101(b). *Interstate Commerce Commission* v. *J-T Transport Co.*, 368 U.S. 81.

QUESTION PRESENTED

The defendant railroads were charged with rate discrimination in violation of Section 3(4) of the Interstate Commerce Act by reason of their refusal to enter into through routes and joint rates via Portland with the Bieber route, of which the complainant Western Pacific Railroad Co. is a part, while entering into such through routes and rates with the Bieber route's competitor, the Southern Pacific Co. The question presented is whether the Interstate Commerce Commission correctly held in these circumstances that Western Pacific could not invoke Section 3(4), prohibiting rate discrimination "between connecting lines," on the ground that, since Western Pacific had no direct physical connection with the defendants and the defendants had not previously established through routes with it, Western Pacific was not a "connecting line" within the meaning of the Act.

STATUTE INVOLVED

Section 3(4) of the Interstate Commerce Act (49 U.S.C. § 3(4)) provides:

> All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and

delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water subject to chapter 12 of this title.

STATEMENT

This case arises out of a complaint (R. 1), filed by the Western Pacific Railroad Co. with the Interstate Commerce Commission, charging the defendants, the Union Pacific Railroad Co. and the Northern Pacific Railway Co., with violating Section 3(4) of the Interstate Commerce Act (49 U.S.C. 3(4)).[1] Section 3(4) prohibits carriers from discriminating "in their rates, fares, and charges between connecting lines." The Commission dismissed the complaint (R. 623), finding, *inter alia*, that Western Pacific was not a "connecting line" entitled to invoke Section 3(4) against the defendants in this case. The district court affirmed the dismissal on this basis (R. 729), without investigating the existence of the alleged discrimination. The question presented, therefore, is whether Western Pacific would have a remedy under Section 3(4) if it were able to establish prohibited rate discrimination against it by the defendants.

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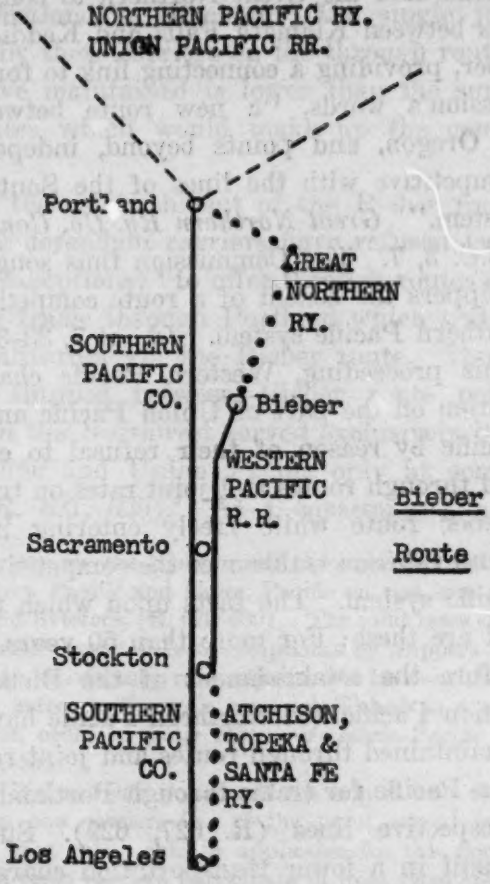
[1] The complaint also charged violations of Section 1(4) of the Act (49 U.S.C. 1(4)), but Western Pacific no longer presses this charge.

The conclusion of the Commission and the district court that Western Pacific was not a "connecting line" or part of a "connecting line" entitled to invoke Section 3(4) was largely based upon the geographical configuration of the railroads involved. A detailed map of all of the relevant railroad routes is reproduced at page 329 of the Record in this Court. We here state the relevant relationships in simple form.

The Union Pacific and Northern Pacific railroads provide rail service between the Pacific Northwest (the States of Washington, Oregon and Idaho) and Portland, Oregon. From Portland, two principal competitive railroad routes run south to California. One of these routes consists exclusively of the track of the Southern Pacific Co. south from Portland to Sacramento, Stockton and Los Angeles. The competitive route to the south from Portland is the so-called "Bieber route" (or the "Inside Gateway"). The Bieber route is not owned entirely by one railroad, as is the Southern Pacific route, but is made up of track of three different railroad companies: (1) the Great Northern Railway Co. from Portland to Bieber, California; (2) the complainant Western Pacific from Bieber to Stockton, California; and (3) the Atchison, Topeka & Santa Fe Railway Co. from Stockton to Los Angeles and other southern California points. Both the Southern Pacific and the Bieber route connect with the Union Pacific and the Northern Pacific at Portland. In California, the track of the Southern Pacific and the Bieber routes is frequently intertwined or closely parallel, the two

routes serve many of the same points, and in almost all places they serve the same immediate geographic area. In schematic form, the relevant routes look as follows:



The Bieber route has existed as an alternative to the Southern Pacific only since 1931. Before that time, the track of the Great Northern and the Western Pacific did not meet at Bieber, but stopped at

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Klamath Falls, Oregon, to the north of Bieber, and at Keddie, California, to the south. In 1930, however, over the protests of the Southern Pacific and the Union Pacific, the Commission authorized the Western Pacific and the Great Northern to construct extensions between Klamath Falls and Keddie to meet at Bieber, providing a connecting link to form, in the Commission's words, "a new route between California, Oregon, and points beyond, independent of and competitive with the lines of the Southern Pacific system." *Great Northern Ry. Co. Construction*, 166 I.C.C. 3, 7. The Commission thus sought to afford shippers the benefit of a route competitive with the Southern Pacific system. *Id.*, at 7, 33–35, 37, 39.

In this proceeding, Western Pacific charges discrimination on the part of Union Pacific and Northern Pacific by reason of their refusal to enter into so-called through routes and joint rates on traffic over the Bieber route while freely entering into such routes and rates on traffic over the competitive Southern Pacific system. The facts upon which the claim is based are these: For more than 50 years, starting well before the establishment of the Bieber route, both Union Pacific and Northern Pacific have voluntarily maintained through routes and joint rates with Southern Pacific for traffic through Portland between their respective lines (R. 627, 629). Such joint rates result in a lower transportation charge to the shipper who ships over the through route covered by the joint rates than would apply if joint rates were not in effect. Without joint rates, for example, traffic from Olympia, Washington (on the Northern Pa-

cific), to Stockton, California (on the Southern Pacific), would pay a rate (called a combination rate) made up of Northern Pacific's local rate from Olympia to Portland and Southern Pacific's local rate from Portland to Stockton. The single joint rate offered by these carriers on the through routes which they have maintained is lower than the sum of the local rates which would make up the combination rate.

Since the establishment of the Bieber route, however, the defendant carriers have refused (with very narrow exceptions) [2] to offer through routes and joint rates on traffic through Portland which travels to or from California via the Bieber route. Thus, traffic can be shipped between Bieber route points and points in the Northwest served exclusively by Northern Pacific and Union Pacific only at combination rates (R. 627, 629).[3] As a consequence, a shipper

[2] Joint rates via the Bieber route through Portland exist with the Northern Pacific and Union Pacific on cast iron pipe, automobiles and livestock (R. 629–630). The joint rates on pipe and on automobiles resulted from complaints by shippers (dismissed pursuant to satisfactory rate adjustments between the parties). The joint rates on livestock were established as a result of a Commission order in *Class Rates, Mountain-Pacific Territory*, 296 I.C.C. 555.

[3] If the Bieber route portion of the trip is over the track of more than one carrier, *i.e.*, if the point served is south of Bieber, a joint rate would be applicable for this portion, since the Bieber route carriers participate in joint rates among themselves for traffic over the route (R. 627, n. 3). The total rate would thus be a combination rate made up of the Bieber route joint rate and a defendant's local rate north of Portland, which would be higher than the joint rate maintained by the defendant with the Southern Pacific.

placing a shipment between a California point served both by the Bieber route and by Southern Pacific and a Pacific Northwest point served exclusively by Union Pacific or Northern Pacific will automatically ship via Southern Pacific rather than the Bieber route to get the benefit of lower joint rates applicable on the through routes maintained by the defendants with Southern Pacific.[4] Indeed, as the examiner noted in the proceeding before the Commission, the Bieber roads "are even deprived of traffic which they themselves originate" (R. 652), which is switched to Southern Pacific for the line haul in order to take advantage of the joint rates not available over the Bieber route (R. 26, 95–96, 628, 632).[5] At the hear-

[4] The Bieber route is competitive with the Southern Pacific route only with respect to movements to and from northwestern points not served exclusively by defendants, but also served by the Great Northern, one of the Bieber route participants. On such traffic, the Great Northern participates in joint rates with both the Southern Pacific and the Western Pacific (R. 627). Where points are served by the Great Northern in common with the Northern Pacific or the Union Pacific, the Great Northern's joint rates, in which the Bieber route traffic participates, are competitive with the joint rates which the latter maintain with the Southern Pacific.

[5] This occurs because the Western Pacific switching charge plus the Southern Pacific joint rate with Northern Pacific or Union Pacific are less than the combination of the Bieber route rate to Portland plus the Northern Pacific or Union Pacific local route rate to the destination (R. 118, 359–402). The Commission noted that in 1961, after one shipper on Western Pacific's line at a common point with Southern Pacific sought to have through rates established over the Bieber route to Northern Pacific and Union Pacific destinations in order to avoid Western Pacific's switching charge, Southern Pacific agreed to absorb the switching charge, thus retaining the line haul (R. 628). This situation, which results from the rate main-

ing before the Commission, it was estimated that the Bieber route's lack of access to joint rates on points served exclusively by Northern Pacific or Union Pacific deprives the three Bieber roads of the revenues from hauling about 25,000 cars per year (R. 90, 632). There was also evidence that attempts to locate new industrial plants on Western Pacific's lines had been discouraged by the unavailability of joint rates with the Northern Pacific and Union Pacific (R. 82–84).

Western Pacific commenced this proceeding by filing a complaint with the Commission in February, 1961 (R. 1), charging Northern Pacific and Union Pacific with violations of Section 1(4) [4] and 3(4) of the Act and seeking the establishment of joint rates with the defendants via the Bieber route and Portland. The other roads making up the Bieber route—

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tained by the defendants, seems contrary to the legislative policy embodied in Section 15(4) of the Act, which provides that "in prescribing through routes the Commission shall * * * give reasonable preference to the carrier by railroad which originates the traffic."

[4] Section 1(4) (49 U.S.C. 1(4)) does not turn on discrimination but generally requires carriers "to establish reasonable through routes" with other carriers at "just and reasonable rates," a duty which the Commission "shall" enforce under Section 15(3) (49 U.S.C. 15(3)) by establishing such routes and rates "whenever deemed by it to be necessary or desirable in the public interest." The Commission declined to exercise this power in this case, basing its decision upon its conclusions that existing service appeared to be adequate, that the Bieber route was slower and costlier than the Southern Pacific route, and that the requested routes would result in short-hauling the defendants on some traffic, in violation of Section 15(4) (R. 644). The district court did not review this decision, apparently because the Section 1(4) claim had been abandoned by Western Pacific.

Great Northern and Santa Fe—were nominally made defendants, but they responded by stating their willingness to participate in the joint rates sought (R. 8–9, 11–12). These carriers presently participate in joint rates with Western Pacific over the Bieber route (R. 627, n. 3). Southern Pacific intervened in opposition to the complaint (R. 14–15).

After a hearing, which included extensive shipper testimony in support of the complaint, the examiner held that the failure to offer the Bieber roads joint rates competitive with Southern Pacific was "an unlawful discrimination in violation of Section 3(4) of the act and should be removed" (R. 655). Division 2 of the Commission reversed (R. 645). It held that Section 3(4) could not be invoked by Western Pacific since it prohibits discrimination only "between connecting lines" and the complaining carrier, in the Commission's view, was not a "connecting line." Admittedly, Western Pacific did "not physically connect with the defendants," since the Bieber route's "connection is made by the Great Northern at Portland" (R. 641), *i.e.*, Western Pacific was the middle segment rather than the northernmost segment of the Bieber route. The Commission then held, on the basis of this Court's decision in *Atlantic Coast Line R. Co.* v. *United States,* 284 U.S. 288, 293, that the term "connecting line" was not limited to lines touching the discriminating line, but also covered "all the lines making up a through route" (R. 641). Such a "through route" would exist only if all "the participating carriers hold themselves out as offering through transportation service" (*Thompson* v. *United States,* 343 U.S.

549, 557; R. 642). On this basis, the Commission concluded that Western Pacific, since it lacked a direct physical connection with defendants, would be a "connecting line" "only if the present routes [maintained by the defendants with Western Pacific] constitute through routes" (R. 641). However, it was clear that "the defendants have not solicited nor encouraged the movement of traffic over the routes sought, but for more than 30 years have tried to keep those routes commercially closed" (except for the few joint rates noted in footnote 2, *supra*) (R. 643). Thus "no effective through routes exist" and Western Pacific was, in the Commission's view, not a "connecting line" entitled to invoke Section 3(4) (R. 643).[7]

The three-judge district court affirmed, agreeing with the Commission's reasons for holding Western Pacific not to be a "connecting line." (R. 730–734). The court regarded its decision as compelled by *Atlantic Coast Line R. Co.* v. *United States, supra,* and *Thompson* v. *United States, supra,* noting that "[a]ny further liberalization of the present definition [of "connecting line"] will have to come from the Supreme Court" (R. 734).

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[7] The Commission further held that even if Western Pacific was a connecting carrier, it had not shown "similarity of circumstances and conditions which justifies equality of treatment" under Section 3(4) (R. 643). The Commission apparently based this conclusion on its factual finding that "[t]he routes sought through Bieber and Portland are longer and involve more difficult operating conditions than the Southern Pacific route, and they require hauls in a general direction opposite to the direct movement" (R. 641). The district court did not review this finding that discrimination did not exist, finding the issue one which "this Court need not and does not reach" (R. 731, n. 3).

SUMMARY OF ARGUMENT

The Commission and the district court have held that a carrier is a "connecting line" entitled to invoke Section 3(4) only (1) if it has a direct physical connection with the allegedly discriminating carrier, or (2) if the discriminating carrier has, in the past, entered into through routes with the complainant. Where the complaining carrier owns the middle segment of a route against which discrimination is directed and where the defendant has steadfastly refused to offer through transportation in common with the complaining carrier, the Commission and district court would wholly deny relief. This view is unduly narrow: It creates a series of anomalous results, not dictated by the language of the statute, which have no relationship to the purposes to be served by Section 3(4) and it permits discrimination to destroy competition contrary to the purposes of the statute. In contrast, the statutory purposes and language are fully served, and the anomalies disappear, under the proper definition of "connecting line"—that a line is a "connecting line" if it is part of a *route* which connects with the defendant, all participants in which stand ready to cooperate in offering through transportation with the defendant.

The Commission and the district court do not seek to justify their definition of "connecting line" by reference to the purposes of the statute but find their restrictive result compelled by this Court's decision in *Atlantic Coast Line R. Co.* v. *United States,* 284 U.S. 288, 293. In fact, the *Atlantic Coast Line* deci-

sion supports the broader definition which we submit, since it did not emphasize the existence of a prior voluntary through route between the complainant and the *defendant,* as the Commission would hold necessary when a direct physical connection is absent, but focused on the existence of through routes between the complainant and the other carriers making up the connecting route, as we do here. The definition which we offer is also consistent with prior decisions (while the Commission's definition is not) and it furthers the Commission's original purpose in creating the connecting Bieber route to establish a route competitive with the Southern Pacific system.

ARGUMENT

THE WESTERN PACIFIC IS A "CONNECTING LINE" ENTITLED TO INVOKE SECTION 3(4) TO REMEDY DEFENDANTS' ALLEGED DISCRIMINATION AGAINST THE BIEBER ROUTE

Section 3(4) of the Interstate Commerce Act prohibits a carrier from discriminating in its rates, fares and charges "between connecting lines." Since the Interstate Commerce Commission and the district court have held that Western Pacific, the complainant here, is not a "connecting line" and therefore cannot invoke Section 3(4) even if the appellees are proved to have in fact practiced discrimination against the Bieber route, the issue before this Court concerns the meaning of the term "connecting lines."[8]

[8] If Western Pacific is a "connecting line", as we contend, it would be the Court's normal practice to remand the case for further consideration of the question of discrimination, a question, resting on the evaluation of particular facts, which the Commission did not treat in detail and which the district court

On this issue, it is common ground that the term includes more than those carriers which have an immediate physical connection with the carrier charged with discrimination. If there had ever been doubt on this score, the point was settled by *Atlantic Coast Line R. Co.* v. *United States,* 284 U.S. 288, 293, where the Court held (affirming the Commission and largely duplicating its language (see 165 I.C.C. 3, 15)):

> There is no warrant for limiting the meaning of "connecting lines" to those having a direct physical connection with [the carrier charged with discrimination] * * *. The term is commonly used as referring to all the lines making up a through route.

The Commission and the district court recognized that the Western Pacific cannot therefore be denied the protection of Section 3(4) in this case merely because it lacks an immediate physical connection with the defendants. They have, however, excluded Western Pacific from the Act's antidiscrimination protection through a definition of "connecting lines" only slightly less narrow than one focusing exclusively upon physical connection. On the basis of the above quotation, the Commission and the district court have held that a carrier complaining of rate discrimination against it by another carrier can invoke Section 3(4) only if it shows either a direct physical connection with the discriminating carrier, or that the discriminating

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did not consider at all. *E.g., Federal Trade Commission* v. *Anheuser-Busch, Inc.*, 363 U.S. 536, 542. Some comment upon the Commission's brief rejection of the discrimination claim here is, however, contained in footnote 18, *infra*, p. 30.

carrier has previously entered into a "through route" with the complainant. For this purpose, the Commission and the court have defined "through route" in the sense in which that term is used in *Thompson* v. *United States*, 343 U.S. 549, *i.e.*, as requiring a showing that, prior to the complaint, the defendant carrier voluntarily held itself out as generally offering through transportation in common with the complaining road. In this case, the complaint is precisely that the defendants have, in the past, steadfastly refused to offer such through transportation in common with the Bieber route while offering through routes with the Southern Pacific system. Hence, there are no existing "through routes" in the *Thompson* sense between complainant and defendants. Since Western Pacific also lacks an immediate physical connection with defendants, the Commission and the district court would consequently afford no relief, regardless of circumstances showing that the Western Pacific is part of a connecting system of carriers (the Bieber route) capable of offering through transportation with defendants but for their rate discrimination favoring the competing Southern Pacific.

In our view, this reading of the Act by the Commission and the district court is unduly narrow: It bears no relationship to the purpose of preserving competition which the Act was designed to serve and, in its application here, it denies protection to a railroad which is the victim of discrimination for the arbitrary reason that the road happens to occupy the central rather than the end segment of a route, the

whole of which is prejudiced by discrimination favoring a competing carrier. We submit instead that a carrier is a "connecting line" within Section 3(4) when it is one of the roads forming a continuous route connecting with the carrier requested to join in establishing non-discriminatory rates, so long as all the participants in the continuous connecting route are willing to cooperate in providing through transportation in combination with the defendant. Such a "line" connecting with the Northern Pacific and the Union Pacific at Portland is formed by the Bieber route, composed of successive segments of the Great Northern Railway, the Western Pacific, and the Atchison Topeka & Santa Fe Railway, all of which are willing to cooperate with the defendants in this case in providing through service by way of Portland. Indeed, through service at joint rates is in fact provided today by those Bieber route carriers on traffic over their own lines up to their connection with the defendants.[9]

We believe it was in this sense of a line which was part of a *route* connecting with the defendant that the *Atlantic Coast Line* case spoke of "connecting lines" "as referring to all the lines making up a through route." We therefore find it unnecessary in this case to consider, as did the Commission and the district court, whether "through routes" as defined by *Thompson* v. *United States, supra,* have existed between the Bieber route and the defendants before the commencement of the present proceedings. If pre-

[9] See footnote 8, *supra,* p. 7.

existing through routes affects the disposition of this complaint, the relevant routes would be those among the Bieber route carriers, not those between the Bieber route and the defendants, and; as we have said, such through routes among the Bieber carriers did, in fact, exist.

We now seek to show, in detail, why we believe the definition of "connecting lines" adopted by the Commission and the district court to be inconsistent with the purposes of the Act, while the definition which we offer in its place would vindicate the statutory aims.

A. THE COMMISSION'S DEFINITION IS ARBITRARY IN RELATION TO THE PURPOSES OF THE ACT

An evident purpose of Section 3(4)'s prohibition of rate discrimination "between connecting lines"—part of a series of statutory prohibitions against "every variety of unjust discrimination" [10]—was to prevent such discrimination from eliminating or interfering with competition between railroads. We address our-

[10] The prohibition of discrimination "between connecting lines" was part of the original 1887 Act, aimed at dealing with widespread discriminatory practices in railroading (S. Rep. 46, 49th Cong., 1st Sess., pp. 182, 215). Shortly prior to the Act, this Court had held, in *Atchison, Topeka & Santa Fe R. Co.* v. *Denver & New Orleans R. Co.*, 110 U.S. 667 (1884), that neither the common law nor the Constitution of Colorado required a railroad in Colorado to accord to one connecting railroad a system of rates and other business relationships which it gave to another competing connecting railroad; but that such an obligation could properly be imposed by legislation similar to English statutes and legislative and constitutional provisions in effect in other States. In the original Act, present Section 3(4) constituted the second (unnumbered) paragraph of Section 3. The first paragraph of the original Section 3 was the forerunner of the present Section 3(1) which prohibits discrimination against persons and localities (49 U.S.C. 3(1)). In discussing Section 3

selves first to the arbitrary nature of the Commission's definition of "connecting lines," in relation to this purpose. This is illustrated most readily by considering three situations comparable in all important respects to the present case, but in which the Commission's definition of "connecting lines" would give relief while denying it here because of factors entirely irrelevant to the statutory purpose.

(1) Were the situation here precisely reversed, *i.e.*, were the defendants discriminating in *favor* of the

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of the original bill on the Senate floor, the Chairman of the Select Committee on Interstate Commerce stated (17 Cong. Rec. 3472 (1886)):

> The third section is broader and more general in its terms, * * * it contains a general prohibition of every variety of unjust discrimination. The section covers two subjects * * *. The second part of the section is modeled in part upon the English and in part upon similar statutes in several of the States. Its purpose is to require railroads to furnish to connecting roads all reasonable and proper facilities for the interchange of traffic that may be necessary for the convenience of the public, and to prevent one road, or a combination of roads, from 'freezing out' a connecting line by refusing to accept traffic from it or deliver traffic to it upon any terms, as has been done.

In 1891, the Interstate Commerce Commission expressed its understanding of the nondiscrimination provision of Section 3(4) as follows:

> When, therefore, the statute declares thaat there shall be no discrimination in rates and charges between connecting lines, it can only mean that no difference or distinction shall be made in rates that shall coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business that under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor. Unless this effect is given to the language of the statute it is only a meaningless enactment [*New York & Northern Ry. Co.* v. *The New York & New England R.R. Co.*, 4 I.C.C. 702, 720].

Bieber route and against the Southern Pacific by establishing through routes and joint rates with the Bieber route carriers to and from points in California while denying them to the Southern Pacific, it is clear that, under the Commission's definition, Southern Pacific could make full use of the remedy provided in Section 3(4). Southern Pacific has a direct physical connection with the defendants at Portland; the Commission would thus hold all the track of Southern Pacific running through California from Portland to be a "connecting line" with the defendants (R. 641). Similarly, the Great Northern, the Western Pacific and the Santa Fe would all be "connecting lines" with defendants at Portland under the Commission's view—the Great Northern because its track touches that of the defendants at Portland, and all three roads because of the previous voluntary maintenance with them by the defendants of "through routes" through Portland (R. 641–642). Thus, there would be no question but that Southern Pacific, were it the prejudiced road, could demand under Section 3(4) to participate in joint rates with defendants on a nondiscriminatory basis as compared with the Bieber route.

(2) Even with the discrimination placed as it is in this case, if the Great Northern were the complaining railroad, rather than the Western Pacific, the Commission's definition would hold it entitled to precisely the relief sought here by the Western Pacific. The Great Northern touches the defendants at Portland and thus, like the Southern Pacific, it is a "connecting line" with defendants at that point under the

Commission's definition. As a "connecting line," the Great Northern would be entitled under Section 3(4) to participate in joint rates over its line to and from California points on a nondiscriminatory basis as compared with the Southern Pacific, even if those points lie at places on the Bieber route beyond the Great Northern's segment of track.[11] (This assumes that the Western Pacific and the Santa Fe would hold themselves ready to join in such rates with the Great Northern to and from California points on the Bieber route, just as the Great Northern and the Santa Fe hold themselves ready to do in this case in combination with the Western Pacific).

(3) With the discrimination placed as it is in this case, the result here would also be different under the Commission's definition if the defendants had, in the past, voluntarily held themselves out as generally offering transportation through Portland over the Bieber route with the Bieber route carriers. In such a case the Commission would hold that the Western Pacific had been part of a pre-existing "through route" with the defendants and was thus now a "connecting line" entitled to invoke Section 3(4) (R. 641-642). Thus if the defendant's joint rates with the Bieber route were discriminatorily higher than those with the Southern Pacific, or if the defendants decided to abandon existing through routes with the Bieber carriers altogether while retaining joint rates with the Southern Pacific, Western Pacific would be entitled to invoke Section 3(4).

[11] Unless the Commission so held, it would permit discrimination against a concededly "connecting line."

The Commission and the district court have therefore, in effect, held, (1) that the Southern Pacific could attack rate discrimination favoring the Western Pacific—but that the Western Pacific has no reciprocal right; (2) that all the remedies sought here could be obtained by the Great Northern—but not by the Western Pacific—although the two roads suffer jointly from the discrimination alleged; and (3) that the Western Pacific could complain if the defendants discriminatorily increased or terminated pre-existing joint rates—but cannot complain where the defendants have wholly refused such joint rates through discrimination.

These distinctions make no sense in terms of the purposes to be served by an anti-discrimination provision, nor have the Commission and the district court sought to justify their unduly limited definition of "connecting lines" by reference to those purposes. Instead, they rely exclusively for their definition upon what they deem to be this Court's view of the meaning of "connecting lines" in *Atlantic Coast Line R. Co.* v. *United States,* 284 U.S. 288, 293. As we next show, however, *Atlantic Coast Line* did not establish the definition adopted by the Commission and district court; on the contrary, it reflected substantially the definition of "connecting line" which we now offer, namely, that a line is a "connecting line" if it is part of a route which connects with the defendant so long as all participants in the connecting route stand ready to offer through transportation between the route and the allegedly discriminating carrier.

B. THE COMMISSION'S DEFINITION IS UNSUPPORTED BY THE ATLANTIC COAST LINE DECISION, WHICH REFLECTS THE DEFINITION WHICH WE URGE

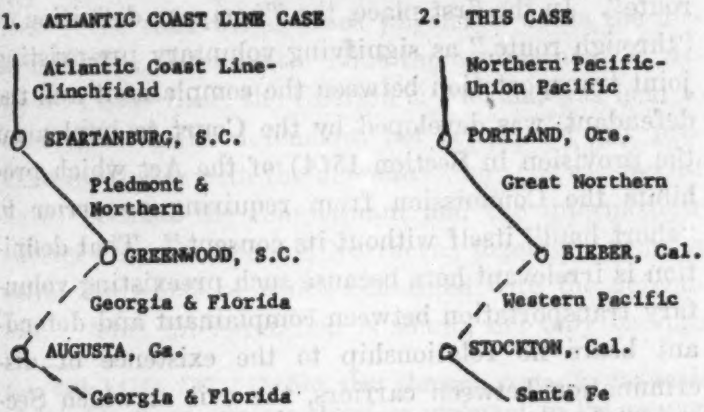
The *Atlantic Coast Line* case arose out of a lease of the Clinchfield Railway by the Atlantic Coast Line, the lease having been approved by the Commission on the express condition that the lessee permit the Clinchfield's line to be used as a link for through traffic by carriers "connecting with the line of the Clinchfield, * * * without discrimination" (284 U.S. at 292). Subsequently, a claim under the lease was advanced by the Georgia & Florida Railroad, which did not touch the Clinchfield, but connected with the Piedmont & Northern, which in turn connected with the Clinchfield. The Georgia & Florida objected to tariffs filed by Atlantic Coast Line as lessee, which sought to eliminate joint rates between points on the Clinchfield and Augusta, Georgia, on the Georgia & Florida. Discrimination was alleged because the Atlantic Coast Line proposed, meanwhile, to maintain joint rates to Augusta via the Clinchfield and a subsidiary of the Atlantic Coast Line which was competitive with the Georgia & Florida.

This Court, in an opinion by Mr. Justice Brandeis, affirmed the Commission's order which found that the Atlantic Coast Line's proposed tariff violated the condition in the lease protecting lines "connecting with the Clinchfield" against discrimination. The Court disposed of the issue whether the Georgia & Florida was a "connecting line" as follows (284 U.S. at 293):

> The argument is that the Georgia & Florida does not connect, since its own rails do not

physically abut on the Clinchfield's rails—the connection being made over the Piedmont & Northern, an intermediate carrier. There is no warrant for limiting the meaning of "connecting lines" to those having a direct physical connection with Clinchfield. The term is commonly used as referring to all the lines making up a through route.[12]

The physical situation of the Western Pacific *vis-a-vis* the defendants in this case is identical, for the purposes relevant here, with that of the Georgia & Florida *vis-á-vis* the Clinchfield in *Atlantic Coast Line,* as the following schematic maps show:



The Commission and the district court, however, have deemed the last sentence of the quoted excerpt

[12] While the *Atlantic Coast Line* decision dealt with construction of "connecting lines" in a Commission order rather than in the Act, the Commission, in a subsequent opinion dealing with the same railroads, *Georgia & Florida R.* v. *Atlantic Coast Line*, 191 I.C.C. 489, 492, 500, found that the defendants' discriminatory refusal to permit the Georgia & Florida and the Piedmont & Northern to participate in joint rates was a discrimination in rates between connecting lines in violation of Section 3(3) (amended in 1940 as present Section 3(4)) as well as discrimination in violation of the lease.

from the *Atlantic Coast Line* opinion to hold that, if a complaining railroad does not have a direct physical connection with the defendant, it can be a "connecting line" only if the defendant railroad has, in the past voluntarily established a "through route" with the complainant as that term is used in *Thompson* v. *United States,* 343 U.S. 549.

Apart from the fact that this sentence cannot easily be read in context as intending a *limitation* upon the concept of what constitutes a "connecting line," the Commission and the district court have misconstrued the Court's reference to the relevance of a "through route". In the first place, the *Thompson* definition of "through route," as signifying voluntary pre-existing joint transportation between the complainant and the defendant, was developed by the Court to implement the provision in Section 15(4) of the Act which prohibits the Commission from requiring a carrier to "short haul" itself without its consent.[13] That definition is irrelevant here because such preexisting voluntary transportation between complainant and defendant bears no relationship to the existence of discrimination between carriers, the evil at which Section 3(4) is directed. Indeed, the alleged discrimination may well be, as it is in this case, the very failure in the past to offer transportation in connection with the complainant.[14]

[13] The "short haul" prohibition of the statute is made specifically inapplicable to cases of discrimination arising under Section 3. See the first sentence of Section 15(4) (49 U.S.C. 15(4)).

[14] The Commission itself indicated in *Sioux City & New Orleans Barge Lines, Inc.* v. *Chicago & North Western Ry.*

Secondly, insofar as through routes between carriers are relevant to a discrimination complaint, the Commission is in error with respect to which carrier relationships are important. In the Commission's view, it is crucial whether the complainant and the *defendant* have voluntarily maintained a "through route" prior to the discrimination complaint. It seems more likely, however, that in focusing upon the relevance of a "through route," the Court in *Atlantic Coast Line* had reference to the existence of routes, not between the complainant and the defendant, but between the complainant and the "intermediate carrier"—the road whose track physically abuts the discriminating defendant. Thus the complainant in *Atlantic Coast Line,* the Georgia & Florida, was held to connect with the defendant, not because of any preexisting routes with the *defendant,* but (as we suggest here) because the complainant and the intermediate carrier (the Piedmont & Northern) together formed a route the whole of which connected with the defendant.[15] This interpretation is sound, not only because

Co., 303 I.C.C. 537, 547, 549, that through routes in the sense of the *Thompson* case are therefore irrelevant to the question raised by this appeal.

[15] This analysis of the *Atlantic Coast Line* decision is corroborated by the result reached by the Commission in *Georgia & Florida R.* v. *Atlantic Coast Line*, *supra*, n. 12. That case was a sequel to the first *Atlantic Coast Line* case, involving the same parties and the same connecting point. The Commission found a violation of Section 3(3) (amended in 1940 as present Section 3(4)) despite a lack, which the decision expressly notes, 191 I.C.C. at 492, 500, of existing through routes via the connecting point. This second *Atlantic Coast Line* decision is thus directly contrary to the position now taken by the Commission.

the Court's opinion does not dwell on the pre-existing relationship between complainant and defendant, as the Commission has done here, but also because it avoids a principal anomaly caused by the Commission's interpretation, namely, that a defendant, by consistently and discriminatorily refusing to offer joint rates with another road, can successfully insulate itself against a charge of discrimination under Section 3(4).[16]

C. THE DEFINITION WHICH WE URGED IS SUPPORTED BY DECISIONS IN OTHER CONTEXTS UNDER THE ACT

The definition of "connecting line" which we thus urge is consistent with decisions bearing upon the meaning of those words in other situations where charges of discrimination have been brought under the Act. For example, in dealing with discrimination by railroads against water carriers, Section 3(4) has been applied where there was concededly no direct physical connection between the complainant and the defendant and where the railroads had, as in this case, wholly refused to enter into through routes or joint rates with the complaining barges.[17] In addi-

[16] Since the discriminatory refusal to enter into through routes is a violation of Section 3(4), *Dixie Carriers* v. *United States*, 351 U.S. 56; *Sioux City & New Orleans Barge Lines, Inc.* v. *Chicago & North Western Ry. Co.*, 303 I.C.C. 537, the Commission has, in effect, held that a past violation of Section 3(4) privileges a present violation.

[17] *American Barge Line Co.* v. *Alabama Great Southern Railroad Company*, 306 I.C.C. 167, 172 (1959), affirmed *sub nom. Atchison, Topeka & Santa Fe Ry. Co.* v. *United States*, 194 F. Supp. 438 (D. Kan., 1961); *cf. Sioux City & New Orleans Barge Lines, Inc.* v. *Chicago & North Western Ry. Co.*, 303 I.C.C. 537 (1958). See also *Oregon Short-Line & U. N. Ry.*

tion, in *Chicago, I. & L. Ry.* v. *United States*, 270 U.S. 287, this Court held that the Commission had correctly condemned the discriminatory refusal by several railroads to maintain reciprocal switching agreements with another road as against the contention that the Act was inapplicable because the defendant neither connected nor maintained any joint service with the complainant. The Court's opinion—written, as was the opinion in *Atlantic Coast Line, supra*, by Mr. Justice Brandeis—has direct application to the present case (270 U.S. at 292–293):

> The steam railroads contend that, in effect, the order [of the Commission] directs them to establish through routes and joint rates, or to allow a common use of terminals; that such extensions of service can legally be made only upon a finding that public necessity and convenience require them, * * * and that, without making such a finding, the Commission has, under the guise of a discrimination order, compelled them to extend their service. It is argued that, as a matter of law, a carrier cannot be guilty of unjust discrimination unless it is able by its own act to remove the inequality; that where there is no direct physical connection with the railroad alleged to be discriminated against, and no joint service is being rendered by the three steam railroads with the South Shore, there cannot, in law, be unjust

Co. v. *Northern Pac. R. Co.*, 61 Fed. 158, 159 (C.A. 9), in which the Ninth Circuit entertained a claim under Section 3(4) even though the Oregon line did not have a "direct" connection with Northern Pacific, but reached it over the leased lines of a terminal company.

discrimination, because the existing inequality can be removed only by the consent of a third party, the intermediate carrier.

The order does not require the steam railroads to extend any service to the South Shore. It leaves them free to remove the discrimination by any appropriate action. *American Express Co.* v. *Caldwell,* 244 U.S. 617, 624; *United States* v. *Illinois Central R.R. Co.,* 263 U.S. 515, 521. Direct physical connection with the carrier subjected to prejudice is not an essential. *St. Louis Southwestern Ry. Co.* v. *United States,* 245 U.S. 136, 144. Unjust discrimination may exist in law as well as in fact, although the injury is inflicted by a railroad which has no such direct connection. Wherever discrimination is, in fact, practiced, an order to remove it may issue; and the order may extend to every carrier who participates in inflicting the injury. *United States* v. *Pennsylvania R.R. Co.,* 266 U.S. 191, 197–9. * * *

D. THE COMMISSION'S RESULT IS INCONSISTENT WITH ITS OWN PURPOSES IN CREATING THE BIEBER ROUTE

Finally, we note that the Commission's result here is particularly inappropriate in view of the Commission's purpose in originally bringing the Bieber route into existence—the belief that there was a particular public need for a railroad route competitive with the Southern Pacific in California. In authorizing the construction which created the Bieber route (*Great Northern Ry. Co. Construction,* 166 I.C.C. 3, 33–34) the Commission stated:

San Francisco and Portland are now connected directly by the rails of but a single car-

> rier. The California Railroad Commission points out that this dependence upon the ability of a single rail carrier is without parallel as between comparable agricultural and industrial centers anywhere in the United States. * * * Generally speaking, the only part of California which now has the benefit of rail competition to or from points in Oregon and Washington is a small area around Los Angeles served by the Union Pacific. With the construction of the proposed line this area would be extended to include all points in California served by the Santa Fe and the Western Pacific.

This purpose to extend the area which "has the benefit of rail competition to or from points in Oregon and Washington" "to include all points in California served by the Santa Fe and the Western Pacific" is significantly frustrated by the Commission's present view which, by permitting defendants to discriminate against the Bieber carriers, insulates the Southern Pacific from effective competition on all California traffic to or from points in the Northwest served only by Union Pacific or Northern Pacific.

In sum, the Commission's view makes ineffective the general statutory purpose of protecting competition from the dampening effects of discrimination and the more particularized purposes of the Commission in initially establishing the Bieber route. In contrast, the definition which we offer—that a line is a "connecting line" entitled to challenge rate discrimination against it under Section 3(4) if it is part of a route which connects with the defendant and which is ready to offer through transportation in combination with the defendant—fully respects the statutory

limitation of protection to "connecting lines" while advancing both the general statutory purpose and the specific competitive function of the Bieber route.[18]

[18] We have not discussed in the body of the brief the question, not reached by the district court, whether the Commission correctly decided that defendants have not been guilty of discrimination against the Bieber route. Some comment upon the Commission's resolution of this issue does, however, seem appropriate in light of the views stated by the Commission on that point. The Commission found that "[e]ven if the complainants were connecting carriers, the evidence of record does not establish the similarity of circumstances and conditions which justifies equality of treatment" (R. 643). It apparently based this finding upon its factual conclusion that "[t]he routes sought [by Western Pacific] through Bieber and Portland are longer and involve more difficult operating conditions than the Southern Pacific route, and they require hauls in a general direction opposite to the direct movement." (R. 641.) The basis of the Commission's conclusion is thus not entirely clear, but the Commission's language does contain a suggestion that operating conditions on the Bieber route if not as favorable as operating conditions on the Southern Pacific route, might well justify the defendants in wholly refusing to participate in joint rates with the Bieber route while fully participating in such rates with the Bieber route's competitor. See also the Commission's opinion in *Denver & R.G.W.R. Co. v. Union Pacific R. Co.*, 287 I.C.C. 611, 658. While some operating conditions on the Bieber route, for example those affecting the feasibility of making the connection between the defendants' lines and the Bieber route or those affecting the ability of the defendants' or the Bieber carriers to gain a fair return on traffic interchanged between the defendants and the Bieber route, might justify the defendants in offering no joint rates whatever with the Bieber route, the mere length or difficulty of the Bieber route would not alone appear to provide such a justification, so long as the defendants are able to obtain adequate divisions of such joint rates and so long as the defendants are not compelled to offer sub-standard transportation which might potentially destroy their good will. We note in this connection that the same differences in operating conditions south of Portland

CONCLUSION

The judgment below should be reversed and the case remanded to the district court for consideration of the Western Pacific's claim of discrimination under Section 3(4).

Respectfully submitted.

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AUGUST 1965.

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found relevant by the Commission in this case did not prevent the Commission from permitting Western Pacific to maintain a competitive level of rates with Southern Pacific for the purpose of meeting water competition (*Pacific Coast Fourth Section Applications* 190 I.C.C. 273); nor have those differences precluded competitive joint rates on some commodities (see note 4, *supra*). The choice between the Bieber route and the Southern Pacific route, in light of the natural advantages and disadvantages of each, is a choice basically to be made by shippers, not by the defendants. Insofar as the Commission's brief treatment of this issue indicates otherwise, we suggest that it is erroneous.

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 12

WESTERN PACIFIC RAILROAD COMPANY, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The unanimous opinion of the three-judge district court (R. 730-734) is reported at 230 F. Supp. 852. The opinion of the Interstate Commerce Commission (R. 623-645) is reported at 316 I.C.C. 795.

JURISDICTION

The judgment of the district court dismissing the complaint was entered on June 22, 1964 (R. 730), and

the notice of appeal was filed on August 17, 1964 (R. 735). Probable jurisdiction was noted on January 18, 1965 (R. 742; 379 U.S. 965). The jurisdiction of this Court rests on 28 U.S.C. 1253 and 2101(b). *Interstate Commerce Commission* v. *J-T Transport Co.*, 368 U.S. 81.

QUESTION PRESENTED

Western Pacific Railroad Company charged that the appellee railroads, Northern Pacific Railway Company and Union Pacific Railroad Company, are engaging in rate discrimination in violation of Section 3(4) of the Interstate Commerce Act, in that they refuse to enter into joint rates with Western Pacific via Portland, Oregon, while doing so with the Southern Pacific Co., although Western Pacific neither physically connects with the defendant railroads at Portland nor participates in through routes with the defendant railroads via Portland. The question presented is whether the entire Interstate Commerce Commission and the unanimous district court have properly interpreted the provision of Section 3(4) prohibiting rate discrimination between "connecting lines", in holding that Western Pacific cannot invoke Section 3 (4) because it is not a connecting line with the defendant railroads at Portland in that it neither physically connects with them at that point nor participates with them in through routes through that point.

STATUTE INVOLVED

Section 3(4) of the Interstate Commerce Act, 24 Stat. 380, as amended, 49 U.S.C. § 3(4), provides:

> All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.

Although Sections 1(4) and 15(3) of the Act are not directly involved in this appeal, their relationship to Section 3(4), to the complaint of Western Pacific, and to the issue here on appeal, is significant. For the convenience of this Court, they are set forth in the Appendix, pp. 40-41, *infra*.

STATEMENT

This case arises out of a complaint (R. 1) filed by the Western Pacific Railroad Co. with the Interstate Commerce Commission. Western Pacific alleged that the Union Pacific Railroad Co., the Northern Pacific Railroad Co., the Great Northern Railway Co. and the Atchison, Topeka and Santa Fe Railway Co. failed and refused to establish and maintain joint rates and through routes with Western Pacific via Bieber, California, and Portland, Oregon, for traffic

moving between points in Oregon, Washington and Idaho, on the one hand, and points in California, on the other. Western Pacific charged that this failure and refusal violated the requirement of Section 1(4) of the Interstate Commerce Act, 49 U.S.C. § 1(4), that every railroad "establish reasonable through routes with other such carriers, and just and reasonable rates, fares, and charges, and classifications applicable thereto". Western Pacific also charged that this failure and refusal resulted in a violation of the provision of section 3(4) of the Act, 49 U.S.C. § 3 (4), which states that railroads "shall not discriminate in their rates, fares, and charges between connecting lines". The relief sought was an order "requiring said defendants to establish, put in force, maintain and apply in the future * * * just, reasonable, nondiscriminatory and competitive joint through rates, charges and practices and through routes." (R. 8).

The existing route and rate situation (R. 626-628) consists of two major routes, called the "Bieber" or "Inside Gateway" route and the "Southern Pacific" route between California points and points in the three-state northwestern area. The Southern Pacific route consists of the Southern Pacific (or, initially Santa Fe, then Southern Pacific) from California to Portland, thence Northern Pacific, Union Pacific or Great Northern to and from points in the northwestern area. The existing Bieber route consists of Santa Fe to Stockton, California, thence Western Pacific (or Western Pacific initially) to Bieber, California, thence Great Northern to and from northwestern points, either via Portland and Vancouver for points west of

the Cascades or east from Wishram along the Columbia River to points east of the Cascades. Western Pacific and Great Northern have joint rates over the Bieber route on the same general basis as the joint rates also maintained by the participants in the Southern Pacific route.[1] The joint rates over the Southern Pacific through route via Portland have existed for over 50 years, whereas the joint rates over the Bieber through route have existed since its construction, or for some 30 years.

In essence, Western Pacific sought to have the Commission order the opening of a new through route and establishment of joint rates over such through route on the same basis as the joint rates over the existing Southern Pacific and Bieber through routes. This new through route would consist of Santa Fe to Stockton (or, initially, Western Pacific), Western Pacific to Bieber, Great Northern to Portland, and then either Northern Pacific or Union Pacific to and from points in the northwestern area.

Northern Pacific and Union Pacific, and their subsidiaries, denied the allegations of the complaint. (R. 9, 10). The Great Northern and Santa Fe answered the complaint with expressions of willingness to establish and maintain the routes and rates sought. (R. 8, 11). Southern Pacific intervened in opposition to the complaint. (R. 14).

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[1] In addition to the Southern Pacific and Bieber routes, the Chicago, Milwaukee, St. Paul and Pacific Railroad Co. maintains joint rates with Western Pacific over routes through Bieber. (R. 627).

definition fully comports with the statutory purpose, and that any further expansion of the term is not warranted." (R. 734). Accordingly, the district court found it to be unnecessary to rule on appellants' further contention that the Commission erred in its conclusion that the record did not establish the similarity of circumstances and conditions requisite to entitle Western Pacific to equality of treatment as to rates.

SUMMARY OF ARGUMENT

The entire Commission and an unanimous three-judge court have held that in order for a railroad to be a "connecting line" within the protection of the provision against rate discrimination in Section 3(4) of the Interstate Commerce Act, it must have either a direct physical connection with the allegedly discriminating carrier at the point of discrimination or, absent that, participate in through routes through that point with such carrier. Appellants and the Department of Justice seek to unduly broaden that definition of connecting lines, in a way never before contended in the 75 year history of Section 3(4), to encompass any possible participant, no matter how remote, in physically available routes reaching the point at which discrimination is alleged to occur. Such an interpretation does violence to the Congressional purpose underlying the provisions of Section 3(4) and its relationship to Sections 1(4) and 15(3) of the Act. There is nothing in the language, legislative history, or statutory context of Section 3(4), or in the common

law or statutory milieu in which it was enacted, which remotely supports appellants' or the Department's proposed definitions. To the contrary, it would seem that the framers of the statutory language had actual physical connection between complainant and defendant in mind.

The Commission and the district court referred to this Court's decision in *Atlantic Coast Line R.R.* v. *United States*, 284 U.S. 288, for the proposition that absent direct physical connection, one railroad may be considered to be a "connecting line" of another if they participate in through routes. Appellants and the Department misread that decision as supporting their much broader interpretations of the term. This Court was not there considering, as appellants contend, some loose concept of physically available service up to, but not through, the point of connection with the discriminating carrier. Rather, it is quite clear that in that proceeding the parties, the Commission, the lower court, and this Court were dealing with, and speaking of, the complainants as connecting lines of the discriminating carrier because they were participants in existing published through routes with that carrier. The later cases with which appellants seek to buttress their interpretation of *Atlantic Coast Line* afford them no support.

If this Court disagrees with the definition of connecting line employed by the Commission and the district court, this case should be remanded to the district court for the resolution of the remaining, primarily factual, issues, which, in sustaining the Com-

mission's ruling on the status of Western Pacific, the lower court found no reason to reach.

ARGUMENT

I. Western Pacific Is Not a "Connecting Line" With Northern Pacific and Union Pacific at Portland, Oregon, Within the Meaning of Section 3(4) of the Interstate Commerce Act

Section 3(4) of the Interstate Commerce Act provides that railroads "shall not discriminate in their rates, fares, and charges between connecting lines * * *". It further provides that "As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this chapter [*i.e.*, railroads] or any common carrier by water subject to [Part III of the Interstate Commerce Act]. Appellant Western Pacific contends that Northern Pacific and Union Pacific violate Section 3 (4) by maintaining a system of joint rates with Southern Pacific via Portland, Oregon, where they physically connect, on traffic between points in California, on the one hand, and points in Oregon, Washington and Idaho, while refusing to do so via the so-called Bieber route in which Western Pacific is an intermediate carrier, although it is 490 miles short of a physical connection with Northern Pacific and Union Pacific at Portland. The Commission found that Western Pacific was not a "connecting line" with Northern Pacific and Union Pacific at Portland because it had neither a physical connection with them nor through routes and rates with them via Portland. Here, as in the court below, Western Pacific contends

that by the words "connecting line" as used in Section 3(4), Congress intended to describe (and protect from rate discrimination) any "continuous series of lines where the traffic on one could physically move onto the tracks of the others" (App. br., p. 19). We submit that this contention that Section 3(4) protects possible "routes" and makes each carrier in such a route a connecting line with the railroads at the possible interchange point (*e.g.* with Northern Pacific and Union Pacific at Portland), does violence to the Congressional purpose.

The statutory language and pattern. Section 3(4) prohibits a railroad from practicing rate discrimination between its "connecting lines", and the latter term is defined in that section as "the connecting line of any [railroad]". This language, on its face, relates to segments of railroad which connect, rather than to every carrier which is embraced in a possible multi-carrier route which ultimately "connects". Such a reading of the clause in question is confirmed by the preceding clause of Section 3(4) which requires railroads to "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivery of passengers and property to and from connecting lines". Obviously, this duty of providing adequate interchange facilities with "connecting lines" refers to lines which "connect" in the sense that interchange is feasible—*i.e.*, a physical track connection or a sufficient proximity to permit a feasible transfer of lading—as from a barge through a grain elevator to railroad cars. There is no basis

Hearing was had before an examiner of the Commission. Santa Fe and Great Northern neither took an affirmative position nor submitted evidence for complainant; Southern Pacific did take a position against the granting of relief and introduced evidence in opposition to Western Pacific's case. (R. 625). Following the hearing, Western Pacific, although emphasizing the Section 3(4) issue, sought findings of violation of both Section 1(4) and Section 3(4). (R. 505). In his report and recommended order, the examiner took the position that he need not reach the Section 1(4) issue of whether the Commission should order the establishment of through routes because plaintiff primarily argued, and he found, a Section 3 (4) violation. (R. 654-655). The basis for his finding of a Section 3(4) violation appeared to be a finding of "connecting line" status for Western Pacific growing out of the existence of a few joint through rates via Portland and the Bieber route on cast iron pipe, automobiles, livestock and class rated traffic.

The Commission reversed the examiner. As the Commission noted, although Western Pacific had by now "indicated a willingness to rely alone on the alleged violation of section 3(4)" it had not withdrawn its Section 1(4) allegations nor its request for "the prescription of through routes", a remedy related to a Section 1(4), rather than 3(4), violation. (R. 643-644). Therefor, the Commission ruled on both issues.

On the Section 1(4) issue the Commission found (R. 644):

> * * * On the basis of this record, we cannot find that the public interest would be served by re-

> quiring the establishment of joint rates and through routes which are substantially slower and costlier than the present routes.

On the Section 3(4) issue, after a lengthy discussion of the law and the facts (R. 640-643), the Commission found (R. 643):

> * * * There is, therefore, no basis for a finding that the carriers are connecting lines within the meaning of section 3(4). Even if the complainants were connecting carriers, the evidence of record does not establish the similarity of circumstances and conditions which justifies equality of treatment.

Pertinent to the issue here on appeal, the Commission concluded that, since Western Pacific was some 490 miles from a physical connection with Union Pacific and Northern Pacific at Portland (R. 625), it could only be a "connecting line" with those carriers at Portland if it participated with them in through routes. (R. 641). The Commission found that the isolated instances of shipments at joint rates relied upon by the examiner, did not, under well-settled precedents, establish the existence of such through routes. (R. 641-643). The Commission cited this Court's opinion in *Atlantic Coast Line R. Co.* v. *United States*, 284 U.S. 288, for the "connecting line" test it thus applied.

The three-judge district court unanimously agreed with the Commission's decision that Western Pacific is not a "connecting line" of Union Pacific and Northern Pacific at Portland. (R. 730-734). The district court stated that it was "satisfied that the present

for contending that "connecting line" means different things in the first and second clauses of Section 3(4). And, taken together, they suggest that the framers of this language had in mind a direct physical connection.

Moreover, Section 3(4) must be read with the through route and rate provisions of Sections 1(4) and 15(3) of the Act. Section 1(4) requires railroads "to establish reasonable through routes with other carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto". If a railroad refuses to do so, the Commission may require it to do so pursuant to Section 15(3) "whenever deemed by [the Commission] to be necessary or desirable in the public interest." However, the enactment of Section 1(4) and Section 15(3) in the Hepburn Act of 1906 (34 Stat. 584, 589) in no way changed the right of a railroad to refuse to join in a particular through route so long as that refusal does not violate some law or is not proven otherwise "necessary or desirable in the public interest". As stated by the Commission in *Routing Restrictions Over Seatrain Lines, Inc.*, 296 I.C.C. 767, 774 (1955):

> * * *, there is nothing in the act that requires a railroad to establish through routes via all possible junctions or by way of all rairoads or water lines with which it might connect, or between all points or areas which might be reached through those connections. On the contrary, the law is definitely that a carrier has the initial duty and the right to select the through routes over which it holds out to transport through traffic and par-

ticipate in the through rates. It may be that the routes it establishes are not reasonable or that its failure to establish other routes may be unreasonable or otherwise unlawful, but such questions require an administrative determination. Short of such a determination and an order requiring the establishment of additional routes, a railroad or water carrier may not be forced to participate in a through route to which it has not agreed, either expressly or impliedly, and which it does not recognize as a through route.

The law imposes certain obligations upon a carrier which joins with its connecting carrier in establishing a through route. It is not unreasonable for such a carrier to refuse to assume those obligations over all routes, and it cannot be required under the law to assume those obligations over a particular route merely because a shipper or connecting carrier selects it. In this connection it is noteworthy that for many years the duty imposed by section 1(4) upon common carriers by railroad included the "duty to establish through routes," and it was not until 1940 that Congress deliberately modified that paragraph so as to restrict the provision to "reasonable through routes."

As compared with the carriers' obligations and the Commission's authority inherent in the statutory scheme of Sections 1(4) and 15(3), the pertinent provision of Section 3(4) is much narrower in scope. Section 3(4) does not speak of "routes", but only of "rates". It is specifically limited to "connecting lines" whereas Section 1(4) is not. And, it is specifically aimed at "discrimination between" such connecting lines as to rates. Thus, it assumes as a condition

precedent the existence of the connection (physical or business) which Sections 1(4) and 15(3) aim at establishing.

It is this relationship of Section 3(4) to Sections 1(4) and 15(3) that underlies the invalidity of the appellants' contention. Before the Commission, they sought relief under Sections 1(4) and 15(3), as well as under Section 3(4). They failed to prove their Section 1(4) case and have abandoned it. As noted above, they contend that the Congress used "connecting lines" "to describe a continuous series of lines where the traffic on one could physically move onto the tracks of the others." This would mean, for example, that not only would Western Pacific be a "connecting line" at Portland but so also would be Santa Fe which connects with Western Pacific at Stockton.[2] It would mean that New Haven, with its western terminus in New York City, is a "connecting line", via various railroads whose tracks connect physically, with every western railroad. In other words, appellants are contending that Section 3(4) may be invoked whenever a railroad shows that it connects via one or more intermediate railroads with another railroad at some distant point where the latter has entered into a joint rate and through route with a third railroad but has not done so with a possible multi-carrier route which includes the complaining railroad.

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[2] It should be noted that, with obvious inconsistency, counsel for appellants was not willing to concede this necessary result during oral argument before the district court. (R. 682).

The result, assuming the requisite similarity of circumstances and conditions, would be to largely eliminate any need for carriers (or shippers) to seek the establishment of through routes and joint rates under Sections 1(4) and 15(3). We submit that reading Section 3(4) in statutory context, no such effect can be given to its prohibition of rate discrimination between "connecting lines".

A. *Neither common law nor the legislative history of Section 3(4) as enacted in the Act to Regulate Commerce of 1887 supports the appellants' concept of "connecting line".*

Section 3(4) derives from the original Act to Regulate Commerce of 1887 (24 Stat. at 380); Section 3, paragraph 2, of which provided pertinently that "Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines * * *".

It is clear from this Court's decision in *A. T. & S. Railroad* v. *D. & N. O. Railroad*, 110 U.S. 667 (1884), only three years before the 1887 Act, that neither common law nor State statutory developments presaged a concept of "connecting line" such as the appellants would now find in Section 3(4). In that case, this Court held that the right of a railroad under a

state constitution to "connect with * * * any other railroad" embraced only the right to a physical connection, not "the right of connecting business with business" (110 U.S. at 679). There, the D. & N. O. brought suit to compel the Santa Fe to unite with D. & N. O. in through transportation at through rates on the same terms and conditions as Santa Fe had with the Rio Grand at Pueblo, Colorado. The D. & N. O. connection with the Santa Fe was 1500 feet from the Rio Grande's connection, but the D. & N. O. was charged local rates by the Santa Fe rather than the lower divisions of through rates with the Rio Grande. The Court, after noting that the common law prohibited a railroad from discriminating "unreasonably" in favor of or against a connecting line (110 U.S. at 667) went on to hold (110 U.S. at 684):

> * * * The bill does not seek to reduce the local rates, but only to get this company put into the same position as the Denver & Rio Grande on a division of through rates. This cannot be done until it is shown that the relative situations of the two companies with the Atchison, Topeka & Santa Fe, both as to the kind of service and as to the conditions under which it is to be performed, are substantially the same, so that what is reasonable for one must necessarily be reasonable for the other. *When a business connection shall be established* between the Denver & New Orleans Company and the Atchison, Topeka & Santa Fe at their junction, *and a continuous line formed*, different questions may arise; but so long as the situation of the parties continues as it is now, we cannot say that, as a matter of

> law, the prices charged by the Atchison, Topeka & Santa Fe, for the transportation of persons and property coming from or going to the Denver & New Orleans, must necessarily be the same as are fixed for the continuous line over the Denver & Rio Grande. (emphasis added).

The Court went on to find that no American cases hold that the common law requires that a railroad "must under all circumstances give one connecting road the same facilities and the same rates that it does to another with which it has entered into special contract relations for a continuous through line and arranged facilities accordingly" (110 U.S. at 685).

Despite the clearly contrary opinion of this Court in *A. T. & S.*, *supra*, which they ignore, the appellants have constructed an elaborate argument to the effect that pre-1887 Federal, State, and English statutes had already developed the concept of "connecting line" which they now urge and that the Congress intended to adopt that concept in Section 3(4)'s prohibition of rate discrimination between connecting lines. We submit that appellants have wholly misread this history.

It is true that in 1866, Congress *authorized* railroads to connect with other railroads "so as to form continuous lines", for the purpose of "exempt[ing] such a course from local interference or prohibition, on the part of State or municipal legislation" (App. br. p. 24). However, as noted above (*supra*, p. 16), this Court interpreted similar statutory rights of railroads to "connect" as a right to make a physical connection, which certainly does not suggest any such

concept of "connecting line" as appellants now urge. It is also true, as appellants state (App. br. p. 26) that the English Railway and Canal Traffic Act of 1854, sec. 2, provided that:

> * * * *every railway company* * * * *and railway* * * * *company, having or working* [*sic*] *railways* * * * *which form part of a continuous line of railway* * * * *communication* * * * shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways * * * without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered [sic] to the public desirous of using such railways * * * as a continuous line of communication. * * * [Emphasis added]

However, the phrase "railways, * * * which form part of a continuous line of railway communication," which appellants would import into Section 3(4) clearly refers, not to a series of independent railways which physically connect, but to railroads which connect through a line operated by one of them. In their discussion of the Railway and Canal Traffic Act (App. br., pp. 27-28) as not being limited in its coverage to direct physical connection, appellants ignore the concept of the intervening line being "worked" or leased.[3] More importantly, the obviously broader phrase "continuous line of railroad communications" employed in the English statute, was not adopted by

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[3] *E.g.* Leased or "worked" railroads were present in the factual situations in the two cases cited by appellants.

the framers of the language in Section 3(4), who chose, instead, the narrower term "connecting lines". And Sec. 2 of the English statute said nothing, at least in terms, about rate discrimination between connecting lines.

The State decisions cited by appellants (App. Br. p. 29) simply do not establish that by 1887 the words "connecting line" had acquired the content appellants would now attribute to them. These decisions fall into two categories. In the first, the language of the pertinent statutes and/or charters was broader in scope than the phrase "connecting line" in Section 3(4).

In *Mayor and City Council of Baltimore* v. *Baltimore and Ohio Rail Road*, 21 Md. 50, a lateral branch of the B & O ran to Benwood, on the Ohio River, at which point goods and passengers were transported to the station of the Central Ohio road on the opposite bank, by means of a steam ferry. There, the Court, in holding " * * * upon the agreed facts in this record, that the Central Ohio Road is a road connecting with the Baltimore and Ohio Railroad, within the meaning of the Act of 1836, * * * " was interpreting a statute which read, in pertinent part, " * * * to subscribe towards the construction of any lateral, *continuing*, or connecting road * * * " (emphasis supplied). Furthermore, it is relevant to note the following portion of the opinion of the trial judge in that case reproduced at pp. 66-67 of the opinion:

> I understand that there is no denial of the fact that the Central Ohio Rail Road is fairly included within the class of lateral, continuing or connecting roads, to which the above Act applies.

> Further, it is admitted, that this road is now in connection with the Baltimore and Ohio R.R., and it is not denied that this connection is advantageous to the said company.

In *Black, et al.* v. *Delaware & Raritan Canal Co.*, 22 N.J. Eq. 130, 402-403 (1871), rev'd on other grounds, 24 N.J. Eq. 455 (1873), the relevant statute read: "* * * or whose works shall form with their own, continuous or connected lines, * * *." Therefore, the court had no difficulty in stating:

> Railroads can be connected, either directly or by intervening roads. The provisions of the Acts of Pennsylvania show this; their phrase is "connected directly or by intervening roads." In either way they are connected; if directly connected, they are also continuous. And the fact that this act uses the word "connected" after "continuous," for the obvious purpose of adding something to the extent of the provision, shows that the intention was to include roads connected not directly, but by some intervening or connecting road.

See also *Philadelphia and E. R.R.* v. *Catawissa R.R.*, 53 Pa. 20 (1866); *Atchison T. & S. F. R.R.* v. *Fletcher*, 35 Kan. 236, 10 Pac. 596 (1886).

The decisions in the remaining three cases cited by appellants, involving factual situations of railroad connections, turned upon other considerations. *Baltimore & O. R.R.* v. *Wheeling*, 54 Va. (13 Gratt) 40 (1855); *Louisville & N.R.R.* v. *State*, 68 Tenn. 522 (1876); *Fitchburg R.R.* v. *Grand Junction R.R. & Depot Co.*, 86 Mass. (4 Allen) 198 (1862).

Appellants point out (App. br., p. 26) that Senator Cullom, in introducing his revised bill in 1886, stated that:

> The third section is broader and more general in its terms [than the second section, outlawing the long-short haul differential] and * * * contains a general prohibition of every variety of unjust discrimination. * * * The second part of the section is modeled in part upon the English and in part upon similar statutes in several of the States. Its purpose is to require railroads to furnish to connecting roads all reasonable and proper facilities for the interchange of traffic that may be necessary for the convenience of the public, and to prevent one road, or a combination of roads, from "freezing out" a connecting line by refusing to accept traffic from it or deliver traffic to it upon any terms, as has been done. [17 Cong. Rec. 3472 (1886).]

Two things should be noted at this point: (1) Section 3 of Senator Cullom's 1886 bill *did not contain the prohibition against rate discrimination between connecting lines*, which appeared for the first time in the later Conference Report. Thus, when Senator Cullom stated that "The second part of [Section 3] is modeled in part upon the English and in part upon similar statutes in several of the States," the inference is that he found in those statutes only requirements of providing reasonable interchange facilities which would preclude a railroad "from 'freezing out' a connecting line by refusing to accept traffic from it or deliver traffic to it *upon any terms*, as has been done." See also Drinker, *The Interstate Com-*

merce Act, (1909), Vol. 1, pp. 321-322. (2) A requirement of reasonable interchange facilities obviously relates to interchanging traffic with physically connecting lines. In all of this, there is not the slightest suggestion of concern over a railroad's relationships with other railroads with which it did not remotely "connect".

As noted above, the Conference Committee bill in 1886 contained the first (and final) provision that railroads "shall not discriminate in their rates and charges between such connecting lines." The provisions provoked little discussion or explanation, since the 1887 debates, like the 1886 debates, were focused largely upon the long haul-short haul and antipooling provisions of the bill. In fact, the only explanation of this provision that we can find is in the extended remarks of Senator Spooner (18 Cong. Rec. Part I, p. 653; Part III, App., p. 37, 49th Cong. 2d Sess.) as follows:

> The conference committee has added to the bill a few lines in section 3, which, in my opinion, greatly improve the section and the bill. I quote part of the Section italicizing the words added: "Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, *and equal* facilities for the interchange of traffic between their respective lines and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, *and shall not discriminate in their rates and charges between such connecting lines.*"

> The principle embodied in the amendment will serve a wise purpose as a general regulation. Congress long ago imposed the same in a qualified way upon the Union Pacific and the Northern Pacific Companies, and the failure sometimes to observe that corporate obligation has been a detriment to other carriers and to large regions of the country.

It would appear that Senator Spooner's reference to the Union Pacific concerned several provisions of the Pacific Railroad Acts. In the words of this Court, Justice Day, in *United States* v. *Union Pacific R.R. Co.*, 226 U.S. 61, at 91:

> These acts required the two roads, the Central Pacific and Union Pacific, to be "operated and used for all purposes of communication, travel, and transportation, so far as the public and government are concerned, as one connected, continuous line" (12 Stat. 489, 495, act of July 1, 1862, c. 120, § 12), and in such operation and use "to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others . . ." (13 Stat. 356, 362, act of July 2, 1864, c. 216, § 15). They also authorized the consolidation of the roads. * * *
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> * * * *

In other words, the only specific explanation of Section 3(4)'s prohibition of rate discrimination is that it is based upon the principle of the Pacific Railroad Acts which applied to railroads which were intended to, and did in fact, connect physically.

We submit that there is nothing in the language, legislative history, or statutory context of Section 3 (4), or in the common law or statutory milieu in which it was enacted, which remotely supports the appellants' contention that by "connecting line" "Congress apparently intended to describe a continuous series of lines where the traffic on one could physically move onto the tracks of the others." It bears emphasis that almost 75 years elapsed before this contention even occurred to anyone.

B. ***The Atlantic Coast Line case supports the definition of connecting line employed by the Commission and the court below and affords no support for the definitions now advanced by appellants and the Department of Justice.***

The district court agreed with the Commission that for a carrier to be within the meaning of the term "connecting line" in Section 3(4) so as to come under the protection of that Section, the carrier must be (R. 733):

> one which has either a direct physical connection at the common interchange or is one which makes up a "through route" through the interchange point. *Atlantic Coast Line R. Co.* v. *United States*, 284 U.S. 288 at 293 (1932).

In *Atlantic Coast Line R.R.* v. *United States*, 284 U.S. 288, at 293, this Court held:

> The argument is that the Georgia & Florida does not connect, since its own rails do not physically abut on the Clinchfield's rails—the connection being made over the Piedmont & Northern, an

> intermediate carrier. There is no warrant for limiting the meaning of "connecting lines" to those having a direct physical connection with the Clinchfield. The term is commonly used as referring to all the lines making up a through route.

The heart of this appeal is appellants', and the Department's, disagreement with the reliance by the Commission and the district court on the above holding of this Court in Atlantic Coast Line as supporting the definition, *supra*. Indeed, they now go further. They assert that *Atlantic Coast Line*, properly construed, actually supports their definition of "connecting line."

Since Western Pacific has no direct physical connection with Northern Pacific or Union Pacific at Portland, the disagreement centers upon the alternative requirement, in the definition here employed, that the complainant participate in a through route *through* the interchange point with the allegedly unlawfully discriminating carrier. And, since Western Pacific admittedly has not participated in such through routes via Portland with Northern Pacific and Union Pacific, appellants and the Department recognize that to prevail here, they must demonstrate that *Atlantic Coast Line* did not merely extend the definition of connecting line beyond direct physical connection to participation in a through route with the discriminating carrier, but also extended that concept to some further point covering Western Pacific's factual situation. To that end, appellants now contend that what this Court meant

in *Atlantic Coast Line* by "through route" was "simply a series of connecting carriers *available* for through transportation service" up to the point of connection with, but not embracing, the discriminating carrier. (App. br., p. 39).[4] This interpretation of *Atlantic Coast Line* is patently unsound.

As all parties here recognize, the origins of *Atlantic Coast Line* go back to 1923 when the Atlantic Coast Line Railroad (ACL) and the Louisville & Nashville Railroad (L & N) sought to lease the Carolina, Clinchfield & Ohio Railway (Clinchfield). As now pertinent, the history of the *Atlantic Coast Line* case, from that beginning, can be found in the opinion of the lower court in that case. *Atlantic Coast Line R. Co.* v. *United States*, 48 F.2d 239 (W.D. S.C. 1931). It is there pointed out that the lease was protested by the Piedmont & Northern (P & N) and the Georgia & Florida (G & F). The Clinchfield connected physically with both the P & N and the Charleston & Western Carolina Railway (C & WC) at Spartanburg, South Carolina. The natural route for traffic coming south from points on the Clinchfield, and beyond its northern terminus was over the C & WC from Spartanburg, through Greenwood, South Caro-

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[4] The Department, specifically injecting an element of consent, similarly contends that *Atlantic Coast Line* substantially reflects the definition "we now offer" that (Dept. br., p. 21):

> a line is a "connecting line" if it is part of a route which connects with the defendant so long as all participants in the connecting route stand ready to offer through transportation between the route and the allegedly discriminating carrier.

lina, to Augusta, Georgia, and other carriers (including the G & F) beyond that point. The P & N had a line between Spartanburg and Greenwood and the G & F proposed to build a line between Greenwood and Augusta, thereby giving the P & N and G & F, together, a connecting line between Spartanburg and Augusta competing with the single line of the C & WC. Therefore, the G & F specifically protested the Clinchfield lease on the ground that it intended to build the Greenwood extension and the ACL, if approval was granted, would discriminate against the G & F in favor of the C & WC (which was operated as part of ACL). 48 F.2d at 242.

The Commission approved the lease, but imposed conditions. Condition 4 prohibited the lessees from causing the Clinchfield to discriminate between carriers "connecting, *or which may hereafter connect*" with the Clinchfield as to through routes and joint rates "between points in territory north and west of the line of the Clinchfield and points at and beyond the Ohio River on the one hand and points in the southeastern and Carolina territory on the other." 48 F.2d at 241. Thereafter, without any protest by the ACL (although ACL was invited to appear), the Commission approved the construction by the G & F of the Greenwood extension. *Ibid.*

A total of 337 joint rates over through routes were established by joint tariffs, 304 of which were participated in by both the P & N and the G & F, on traffic moving over the Clinchfield between points at and beyond the Ohio River, on the one hand, and points in

southeastern and Carolina territory, on the other. 48 F.2d at 240. Immediately prior to the opening for business of the completed Greenwood extension, the lessees sought to cancel the applicability of these joint rates over the Greenwood extension of the G & F by publishing tariff restrictions which would exclude the P & N—G & F route between Spartanburg and Augusta from the published through routes and joint rates on traffic moving via the Clinchfield between Ohio River points, on the one hand, and the southeastern and Carolina territory on the other. 48 F.2d at 240-241. The Commission ordered the restrictions canceled, upon complaint, as to 304 of the joint rates.

Appellants and the Department overlook two significant points about the Commission's decision in *Atlantic Coast Line*. First, *both* the P & N and G & F were complainants. 48 F.2d at 240. Second, the Commission accorded different treatment to the 33 rates in the tariffs to which the G & F was *not* a party. The lower court in *Atlantic Coast Line* agreed with that different treatment, holding as follows, 48 F.2d at 245:

> It is argued that the commission was without power to enter the order in question because it is said that the order was in effect the establishment of new and additional through routes without affording a hearing as required by section 15(3) of the Interstate Commerce Act as amended by the Transportation Act of 1920, § 418 (49 USCA § 15(3). *This point was made before the commission and was sustained as to 33 of the 337 schedules originally involved, on the ground*

that these 33 schedules related to tariffs to which the G. & F. was not a party. As pointed out by the commission, however, it had jurisdiction as to the remaining 304 restrictive schedules because their purpose was to restrict the joint rates that would automatically become applicable over the Greenwood extension upon its completion without the filing of additional tariffs or further action by the commission. *These 304 restrictive schedules, therefore, affected existing rates, fares, and charges applicable on traffic, to, from, or over the G. & F. within the meaning of section 15(7) of the Interstate Commerce Act* as amended by the Transportation Act of 1920, § 418, as amended by Act March 4, 1927, § 2 (49 USCA § 15(7). [Emphasis added.]

Before this Court in *Atlantic Coast Line* the United States and I.C.C. offered alternative arguments consistent, as we shall show, with our present interpretation of "connecting lines." The primary argument was that under the conditions of the leasing approval the G & F was a connecting line with the Clinchfield despite the lack of direct physical connection, because of the prior history, commencing with the leasing case, which established the role of G & F as a participating carrier in through routes *with the Clinchfield*, "between the territory north of the Ohio River and the Southeast" and, therefore, within the protection of the lease conditions.[8] This, we contend, is clearly the argument accepted by this Court in the passage

[8] Brief for the United States and the I.C.C., *Atlantic Coast Line R. R.* v. *United States*, No. 88, October Term 1931, pp. 16-18.

from the opinion quoted, *supra*. The alternative argument,[6] quoted by appellants herein (App. br., pp. 36-37), was that should this Court disagree with the G & F's right to complain as a "connecting line," because physical connection is the required standard, then the P & N, a complainant, satisfied that standard, had a right to seek relief, and that relief, to be effective, necessarily and properly covered the G & F's Greenwood extension. Thus, as applied to the instant case, had the Great Northern been a complainant, it could have asserted connecting line status, based upon direct physical connection at Portland, as to through traffic moving over the Bieber route. Of course, when this Court agreed with the Commission and the district court as to the G & F's right to complain as a "connecting line," there was no need to rule on the alternative argument as to the P & N.

The correctness of our interpretation of *Atlantic Coast Line* is most clearly demonstrated by means of answer to the contrary contentions of appellants and the Department. Appellants sum up their contentions at pages 38-39 of their brief. They contend that in *Atlantic Coast Line* the "important point" is that the discriminating carriers (lessees of the Clinchfield) "had never purposefully held themselves out as offering through transportation service over the complainants' lines." (App. br., p. 38). Upon that premise, and their view of the "facts and the arguments" in *Atlantic Coast Line*, they contend that this Court did not refer to the G & F as being part of "a through

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[6] *Ibid.*, pp. 18-19.

route in the sense that, as phrased in *Thompson*,[7] 'the participating carriers hold themselves out as offering through transportation service,' " but, rather, must have been speaking of a through route in the sense of "connecting carriers *available* for through transportation service." (App. br., p. 39). Moreover, they make clear that what they mean by "connecting carriers *available* for through transportation service" is a through route between the G & F and P & N to the point of P & N's connection with the Clinchfield which they compare to the Western Pacific-Great Northern through route to Portland.[8] (App. br., p. 39).

Appellants' "important point," their basic premise, is clearly erroneous. It is the same argument advanced by the lessees of the Clinchfield and, obviously, rejected at every stage of the *Atlantic Coast Line* proceedings. It is the argument that there never was a through route *through* the point of interchange with the Clinchfield because the restrictions were published prior to the opening of the Greenwood extension. (App. br., pp. 34, 38). As appellants recognize (App. br., p. 35), the lessees of the Clinchfield brought this argument to its sharpest focus by contending that the Commission's order violated Section 15(3) by establishing new and additional through routes without a hearing as required by that Section. The district court in *Atlantic Coast Line* rejected that argument in the passage quoted, *supra*. The lessees re-

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[7] *Thompson* v. *United States*, 343 U.S. 549, 557 (1952).

[8] The Department takes the same view (Br., p. 25).

peated their argument in this Court, asserting: [9]

> The Commission seeks to sustain its order on the theory that the restrictive notes *closed existing routes.* The restrictive notes *prevented* the opening of future routes.

The United States and Commission, after pointing out that this contention had been correctly sustained by the Commission as to the tariffs in which the G & F was not a participant, replied: [10]

> Through routes and joint rates named in tariffs which have been filed with the Commission constitute existing routes and rates, although there has been no movement of traffic thereunder. See *Virginian Railway Co.* v. *United States*, 272 U.S. 658, 666.
>
> The action of the Commission did not open new routes, because the restrictive schedules which it ordered cancelled were supplements to tariffs to which the Georgia & Florida was a party.

We submit that this facet of the *Atlantic Coast Line* case, plus the repeated references to the through routes in question as being those between points north of the Ohio River, on the one hand, and points in southeastern and Carolina territory, on the other, make absolutely clear the through routes which the parties, the district court, and ultimately this Court, had in mind. Moreover, if as appellants argue, what

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[9] Brief for Appellants, *Atlantic Coast Line R. R.* v. *United States*, No. 88, October Term 1931, p. 48.

[10] Brief for the United States and I.C.C., *supra*, at p. 28.

the parties, the Commission, the district court, and this Court had in mind was a loose concept of "connecting lines" as being physically available service up to, but not through, the point of connection with the discriminating carrier, then the restrictions cancelling the 33 joint rates in tariffs in which G & F was not a participant would never have been sustained.

We agree with appellants that although this Court in *Atlantic Coast Line* was construing the meaning of the terminology in the lease conditions, its interpretation of "connecting lines" is now applicable to that term in Section 3(4). We agree that the interpretation arrived at went beyond mere direct physical connection and submit that this Court intended to encompass participants in through routes, as later specifically defined in the *Thompson* case, *supra*. But, we further submit that this Court did not intend, and had no need, to push that definition to the extremes advocated by appellants and the Department.[11]

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[11] The Department asserts (Dept. br., p. 25, n. 15), that the subsequent Commission decision in *Georgia & F.R.* v. *Atlantic Coast Line R. Co.*, 191 I.C.C. 489 (1933) is contrary to our interpretation of Atlantic Coast Line. It is sufficient answer to here note that in *Georgia & F. R.* it does not appear that anyone raised the question of complainants' connecting line status, that the P & N was a complainant, and that, as appropriate to the discrimination charged, the Greenwood extension had been completed and direct physical connections were present.

C. ***Decisions subsequent to Atlantic Coast Line provide no support for appellants' novel concept of a "connecting line".***

Section 3(4) defines the term "connecting line" as including "the connecting line of * * * any common carrier by water subject to [Part III of this Act]." Appellants seek support for their novel definition of "connecting line" from the Commission's reports in *American Barge Line Co.* v. *Alabama G. S. R.R.*, 296 I.C.C. 247 (1955), 303 I.C.C. 463 (1958), and 306 I.C.C. 167 (1959), and related judicial decisions (App. br., pp. 43-48). From these materials, they argue that since barge lines were held to be connecting lines of railroads under Section 3(4) "though intermediate facilities were necessary for transfer of the grain from barge to train," it follows that "no direct physical connection is necessary in order for there to be 'connecting line' status", but that "there need be only a series of connecting carriers capable of, and available for, handling through service but prevented from doing so by the discriminatory rates" (App. br., pp. 47-48). The argument wholly distorts the Commission and court decisions upon which it is based.

Since 1940, the Congress in Section 3(4) has defined "connecting line" to include the "connecting line of any common carrier by water." Obviously, a water carrier does not connect with a railroad as railroads connect with each other (*i.e.* by connecting tracks). Nevertheless, a practical meaning must be given to the statutory concept of a "connecting line" of a water carrier, and this was one of the problems involved in the American Barge Line cases. In brief, the Com-

mission concluded that a railroad and a barge line should be treated as connecting lines at any point where they so meet that it is practical to transfer cargo from one to the other, *i.e.*, a distance of a few feet or yards. The Commission described such transfer facilities as follows (306 I.C.C. at 170, 171):

> * * * berthing facilities for barges are provided, the docks are served by rail tracks, and with the equipment available under the arrangements with stevedores it is possible for grain to be transferred to cars for rail switching or line-haul movement.
>
> * * * *
>
> Elevators with docking space for barges, served directly by railroads and equipped to unload barges, are situated at Port Cargill, et cet. * * *

A similar view was expressed by the three-judge court which reviewed the above-quoted Commission decision in *Arrow Transp. Co.* v. *United States*, 176 F. Supp. 411, 419 (N.D. Ala. 1959) affirmed as *State Corp. Comm. of Kansas* v. *Arrow Transp. Co.*, 361 U.S. 353 (1960) as follows:

> The contention is advanced with apparent seriousness by some of the intervening defendants that Arrow is not a connecting carrier in relation to the railroads which serve the Tennessee River ports. This argument is wholly without merit. At each of the Tennessee River ports there are facilities by which grain can be transferred directly from barges into rail cars, but the normal type of transfer is through an elevator. We hold that Arrow is a connecting carrier of the out-

> bound rail carrier when it delivers grain in its port-to-port service to a river elevator or other unloading facility which has a rail connection for the subsequent reshipment of that grain. * * *

In brief, the fact that a river-bank grain elevator may serve to "connect" a water carrier and a railroad for the purposes of Section 3(4), does not remotely suggest that "connecting line" status may be found via hundreds of miles of the tracks of other and independent railroads.

Appellants rely upon *Chicago, I. & L. Ry.* v. *United States*, 270 U.S. 287 (1926). Taken in its most favorable form to plaintiff, this case simply holds a direct physical connection is not necessary—a point with which the Commission and lower court here agreed on the basis of the later *Atlantic Coast Line* case.

Factually, in the *Chicago, I. & L.* case, the South Shore had through routes and joint rates with the Lake Erie, and a reciprocal switching arrangement with that carrier at Michigan City. Three other carriers entering Michigan City did not all physically connect with the Lake Erie or each other but, nevertheless, had reciprocal switching arrangements with that carrier and each other.[12] These three refused to enter into joint rates and through routes and reciprocal switching with the South Shore. Legally, the South Shore did not seek joint rates and through routes with the three carriers and the case presented

---

[12] *Chicago, Lake Shore & S. B. Ry. Co.* v. *L.E. & W. R.R. Co.*, 88 I.C.C. 525, 526 (1924).

no question of whether they were "connecting lines" under Section 3(4) for that purpose.

The case simply presented the question of whether three of four carriers, all four of which did not physically connect each with the other yet reciprocally switched for each other, can refuse to do so for a fifth carrier which physically connects and reciprocally switches with one of the four. Assuming, *arguendo*, the validity of the analogy, the point of the holding, as here pertinent, would seem to be that the carriers having waived any requirement of physical connection for connecting line status as to some cannot refuse to do so for all. That is not this case. Moreover, such cases as this which involve switching or terminal services are not really in point. This is clear from this Court's decision in *Louisville & Nash. R.R.* v. *United States*, 238 U.S. 1, 18-19 (1915), which distinguishes the situation where a carrier is compelled to make through routes and joint rates from the stiuation where it is directed to render switching services without discrimination. See also *Atlantic Coast Line R.R. Co.* v. *United States*, 205 F. Supp. 360, 365 (M.D. Ga. 1962), affirmed 371 U.S. 6 (1962).

Appellants contend that *Denver & R. G. W. Co.* v. *Union R.R. Co.*, 351 U.S. 321 (1956), supports their view that a through route through the connecting point is not essential to a finding of discrimination under Section 3(4). (App. br., pp. 52-53). But, again, we do not contend it is essential *if* direct physical connection is present. Direct physical connection was present in that case. The remaining cases cited

by appellants (App. br., pp. 53, *et seq.*) are so clearly irrelevant to the issue that specific discussion is not merited.

Finally, the Department of Justice (Dept. br., pp. 28-30) contends that the definition of "connecting line" applied by the Commission and the court below is inconsistent with the Commission's own purpose in authorizing the construction which created the Bieber route. *Great Northern Ry. Co. Construction*, 166 I.C.C. 3. Admittedly, a purpose of the Commission was to authorize competitive rail service from California to the north. We fail to see how the Commission's purpose could modify the Congressional definition of "connecting line," and we note that such a possibility did not occur to Western Pacific until about 30 years after such construction was authorized.

II. This Court Should Not Resolve the Issue of Similarity of Circumstances and Conditions

The Commission concluded both that Western Pacific was not a "connecting line" within the meaning and protection of Section 3(4) and, even if it were, that it had not established the requisite substantial similarity of circumstances and conditions to entitle it to relief under that Section. The district court affirmed the first conclusion and, therefore, found it to be unnecessary to rule on the primarily factual issues raised as to the second conclusion (R. 731-732). Appellants now urge that, should this Court find that the Commission and district court erred on the connecting line issue, remand is unnecessary and this Court should proceed to analyze the record and rule

on the issues raised as to the Commission's conclusion of insufficient similarity of circumstances and conditions to warrant relief. (App. br., part II, pp. 64, *et seq.*) We submit, with the apparent concurrence of the Department (Dept. br., pp. 13, n. 8, 31), that if this Court finds for appellants on the connecting line issue, the Court, in accordance with its normal practice, should go no further, but rather, remand the matter to the district court. However, if this Court concludes to treat with the remaining issues, then we adopt for our argument the materials contained on those issues in the brief of appellee railroads.

CONCLUSION

It is respectfully submitted that the judgment of the district court should be affirmed.

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Interstate Commerce Commission.

SEPTEMBER 1965

APPENDIX

Section 1(4) of the Interstate Commerce Act, 54 Stat. 899, 49 U.S.C. 1(4), provides:

> It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers.

Section 15(3) of the Interstate Commerce Act, 54 Stat. 911, 49 U.S.C. 15(3), provides:

> The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by car-

riers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and mima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 12

Supreme Court, U.S.
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THE WESTERN PACIFIC RAILROAD COMPANY, ET AL., *Appellants,*

vs.

THE UNITED STATES OF AMERICA, ET AL., *Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF FOR APPELLEES NORTHERN PACIFIC RAILWAY COMPANY, UNION PACIFIC RAILROAD COMPANY, AND SOUTHERN PACIFIC COMPANY

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OCTOBER TERM, 1965

No. 12

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLEES NORTHERN PACIFIC RAILWAY COMPANY, UNION PACIFIC RAILROAD COMPANY, AND SOUTHERN PACIFIC COMPANY

OPINIONS BELOW

The unanimous opinion of the three-judge District Court (R. 730-734) is reported at 230 F. Supp. 852. The opinion of the Interstate Commerce Commission (R. 623-645) is reported at 316 I.C.C. 795.

JURISDICTION

The jurisdictional requisites are adequately set forth in the separate briefs for appellants and the United States.

STATUTE INVOLVED

Section 3(4) of the Interstate Commerce Act,[1] 24 Stat. 380 as amended (49 U.S.C. § 3(4)) provides:

> "All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water subject to chapter 12 of this title."

[1] The Interstate Commerce Act is hereinafter referred to as Act.

While Sections 1(4), 15(3) and 15(4) of the Act (49 U.S.C. §§1(4), 15(3) and 15(4)) prescribing the duty of carriers to establish through routes and authorizing the Commission to establish such routes as it finds "necessary or desirable in the public interest," subject

to certain safeguards, are not directly involved in this appeal, they were involved in the proceeding before the Commission; therefore, for the convenience of the Court they are set forth in Appendix A to this brief.

QUESTION PRESENTED

The question presented is whether the entire Interstate Commerce Commission and a unanimous District Court have properly construed Section 3 (4) of the Interstate Commerce Act in holding that The Western Pacific Railroad Company, which does not have a direct physical connection and does not participate in through routes with the appellee carriers,[2] is not a connecting line of the Northern Pacific Railway Company and Union Pacific Railroad Company at Portland, Oregon.

STATEMENT

A. Nature of the Proceedings

This is a direct appeal pursuant to 28 U.S.C. §§1253 and 2101 (b) from a final judgment filed on June 22, 1964, by a district court of three judges especially constituted pursuant to §§2284 and 2325 dismissing appellants' complaint which sought to set aside an order of the Interstate Commerce Commission which found that the establishment of through routes and joint rates in connection with the appellee carriers through Bie-

[2] Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company (Northern Pacific) and Union Pacific Railroad Company (Union Pacific).

ber, California, and Portland, Oregon, between points in California, on the one hand, and points in Oregon, Washington and Idaho on the other, is not necessary or desirable in the public interest under Section 1(4) of the Act. The Commission also found that the refusal of the appellee carriers to establish through routes and joint rates with the appellants The Western Pacific Railroad Company and its short line subsidiaries[3] through Bieber via Portland, between the same points on the same basis as those maintained by the appellee carriers with the Southern Pacific Company (Southern Pacific) through Portland, does not result in discrimination against the Western Pacific in violation of Section 3(4) of the Act.

B. Historical Background of the Commission's Order

For more than half a century, the Northern Pacific and the Union Pacific have maintained through routes and a full line of joint through rates with the Southern Pacific via Portland between points in the states of Oregon, Washington and Idaho, on the one hand, and points in California on the other (R. 627).[4] Since 1931 the Western Pacific together with the Santa Fe and the Great Northern has maintained joint through rates over routes through Bieber, between points in California and

[3] The Sacramento Northern Railway and the Tidewater Southern Railway Company, hereinafter collectively referred to as "Western Pacific" or "appellants."

[4] Hereinafter referred to as the Southern Pacific route.

points in Oregon, Washington and Idaho on the same basis as those maintained by the Northern Pacific and the Union Pacific with the Southern Pacific (R. 626, 627).[5] The Western Pacific connects with the Santa Fe at Stockton, California, on the south and with the Great Northern at Bieber on the north (R. 626). Bieber is 490 miles south of Portland and 246 miles south of Bend, Oregon, which is served by the Oregon Trunk, a wholly-owned subsidiary of the Spokane, Portland and Seattle Railway Company (SP&S),[6] and by the Union Pacific (R. 625, 640).

In addition to the full line of joint rates available over the two major competitive through routes described above, the Milwaukee Road maintains joint rates with the Western Pacific through Bieber (R. 627). Further, the Union Pacific publishes competitive rates to the Los Angeles area over its single-line route via Salt Lake City and also participates in routes with the Western Pacific and Southern Pacific via Utah and Nevada interchanges (R. 626, 627).[7] For the convenience of the Court a scale map of the territory involved showing the lines of railroad in appropriate color is contained in Appendix B of this brief.

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[5] Hereinafter referred to as the Bieber route.

[6] While the SP&S is not a party to this proceeding, it is under the common control and management of the Northern Pacific and Great Northern. See *Chicago, M., St. P. & P. R. Co.* v. *Spokane, P. & S. Ry. Co.*, 300 I.C.C. 453, ac'd 182 F. Supp. 81 (E.D. Wis.), 366 U.S. 745 (1961).

[7] The Northern Pacific and Union Pacific maintain a few joint rates with the Western Pacific via the sought routes; however, the Commission found, and the District Court affrmed, that through routes do not exist. See *Chicago, M., St. P. & P. R. Co.* v. *U. S.*, 366 U.S. 745 (1961); *Thompson* v. *United States*, 343 U.S. 549, 557 (1952).

C. Proceedings Before the Commission and the District Court

Western Pacific in its complaint to the Commission alleged that the Northern Pacific, Union Pacific, Great Northern, Santa Fe and their short-line connections had violated both Sections 1(4)[8] and 3(4) of the Act and sought an affirmative order requiring the establishment of through routes and joint rates through Bieber via Portland, between points in California and points on the Northern Pacific and Union Pacific and their short-line connections in Oregon, Washington and Idaho (R. 624, 625).

Division 2 of the Commission found that the public interest did not require the establishment of the sought through routes and joint rates under Sections 1(4) and 15(3) of the Act[9] and that the sought routes would, in many instances, short-haul the Northern Pacific and the Union Pacific without their consent, contrary to Section 15(4) of the Act (R. 644, 645).[10] In addi-

---

[8] 49 U.S.C. §1(4) requires railroads, *inter alia*, to "establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto;" and "to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, * * *"

[9] 49 U.S.C. §15(3) authorizes the Commission, after full hearing, to establish, *inter alia*, such through routes, joint classifications and joint rates, applicable to the transportation of property by railroad as it finds "necessary or desirable in the public interest" together with the terms and conditions under which such through routes shall be operated.

[10] 49 U.S.C. §15(4) restricts the power of the Commission under paragraph (3) of the same section to require a railroad, without its consent, to embrace less than its entire length, subject to certain exceptions; namely, (a) the through route would be "unreasonably long" or (b) the through route is needed "to provide adequate, and more efficient or more economic, transportation: * * *"

tion, the Commission found that the Western Pacific is not a "connecting line" of the Northern Pacific and Union Pacific at Portland within the meaning of Section 3(4) of the Act. Further, even if it were a connecting line, the evidence of record did not establish the necessary similarity of circumstances and conditions which would justify equality of treatment (R. 643).

Following the denial of its petition for reconsideration by Division 2 of the Commission, and ultimately by the entire Commission, the Western Pacific instituted an action in the United States District Court for the Northern District of California seeking to have the Commission's order set aside, contending, *inter alia*, that the Western Pacific is a connecting line of the appellees Northern Pacific and Union Pacific at Portland within the meaning of Section 3(4) of the Act and that the evidence of record established the necessary similarity of circumstances and conditions sufficient to require equality of treatment at Portland (R. 614-622). The District Court dismissed the complaint holding that the Commission had properly determined that the Western Pacific is not a "connecting line" within the meaning of Section 3(4) of the Act (R. 729-734). The Court did not consider it necessary to decide whether the Commission had erred in its finding that the evidence of record did not establish the necessary similarity of circumstances and conditions which would justify equality of treatment at Portland or to decide the other issues raised by the Western Pacific (R. 731, 732).

SUMMARY OF ARGUMENT

The Commission and the District Court's broad definition of the term "connecting line" in Section 3(4) of the Act to include all lines which either have a direct physical connection or participate in through routes and rates is supported by the language of the statute, its history and its common law background. The many duties imposed by Section 3(4) extend solely to "connecting lines" and not routes or competing routes as appellants contend. Since no physical connection exists between the Western Pacific and the Northern Pacific and Union Pacific at Portland and the Western Pacific does not participate in through routes and rates with the Northern Pacific or the Union Pacific (*Thompson* v. *United States*, 343 U.S. 549, 557 (1952)), it is not under the decision of this Court in *Atlantic Coast Line R. Co.* v. *United States*, 284 U.S. 288, 293 (1932), a connecting line of the appellees.

Railroads are not required to establish routes and rates via all possible gateways and junctions. *Routing Restrictions over Seatrain Lines, Inc.*, 296 I.C.C. 767, 744 (1955). Section 1(4) of the Act requires railroads to establish reasonable through routes with other such carriers and just and reasonable charges applicable thereto. The Commission properly found that the public interest did not require additional routes and rates between points in California and points in the Northwest. While the Western Pacific has not challenged this finding, it does contend that the refusal of the appellees to join the

Western Pacific in the establishment of such additional routes and rates violates Section 3 (4).

Western Pacific's unique contention that all that is required is physically available service ignores the qualifying adjective "connecting" and would, perforce, make every railroad in this country a connecting line of the Northern Pacific and Union Pacific at Portland. Such a construction would result in a multiplicity of circuitous routes contrary to the National Transportation Policy. The United States while recognizing that Section 3 (4) is limited to a particular class of carriers asserts that a railroad is a connecting line if it is part of a route which connects with defendant so long as all participants in such route "are willing to cooperate in providing through transportation in combination with the defendant" (p. 16). This extraordinary definition is without statutory or judicial precedent and is both unworkable and indefinitive because it is dependent upon the consent of all intermediate carriers.

The District Court properly recognized that the Commission's definition conforms to the purposes of the Act and the National Transportation Policy for it stated "This Court is satisfied that the present definition fully comports with the statutory purpose, and that any further expansion of the term is not warranted. * * *" (R. 734). Moreover, this definition recognizes and preserves the vigorous rail competition which presently exists in this area between the Bieber route partners, on the one hand, and the Southern Pacific route partners on the other.

In addition, the Commission found that the record did not establish the similarity of circumstances and conditions necessary for a finding of discrimination under Section 3(4). The District Court did not reach this issue and normal practice, which appellees urge be followed, is to remand to the District Court for further consideration if this Court should find that Western Pacific is a connecting line of the appellees at Portland. However, if this Court should consider the discrimination issue, it will find that the Commission's treatment of the issue was thorough, that its findings are within the Commission's special competence, are based on adequate subsidiary findings which are supported by substantial evidence and should be affirmed. *Minneapolis & St. Louis R. Co.* v. *U. S.*, 361 U.S. 173 (1959).

ARGUMENT

I

The Commission and the Court Properly Found That the Western Pacific Is Not a Connecting Line

A. *The Statutory Language and History Support the Decision.*

The Western Pacific's line does not extend north of Bieber, California, which is 490 miles south of Portland, Oregon. Moreover, the Western Pacific does not participate in through routes with the Northern Pacific

or the Union Pacific. In fact, this is the very genesis of the complaint. Therefore, the Commission and the District Court held that under Section 3(4) of the Act Western Pacific does not meet the requirement that a connecting line "is one which has either a direct physical connection at the common interchange or is one which makes up a 'through route' through the interchange point" (R. 733). As we shall demonstrate, this construction is required both by the language and history of the statute.

Section 3(4) of the Act, *inter alia*, prohibits a railroad from discriminating in its "rates, fares, and charges between connecting lines." The term "connecting line" is defined to mean "the connecting line of any (railroad)" or "any common carrier by water subject to the (Act)." This paragraph imposes a number of other requirements for the benefit of "connecting lines"; namely, the providing of "reasonable, proper, and equal facilities for the interchange of traffic" and for the "receiving, forwarding, and delivering of passengers or property." Further, it prohibits undue "prejudice (of) any connecting line in the distribution" of unrouted traffic. The term "connecting line" is obviously used in the same sense throughout the paragraph.

This paragraph of the Act must be read in *pari materia* with the other provisions of the Act. Section 1(4) of the Act requires carriers, *inter alia*, "to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges and classi-

fications applicable thereto."[11] The Commission has the power pursuant to Section 15(3) of the Act to require carriers to establish whatever through routes and joint rates are "necessary or desirable in the public interest" (49 U.S.C. §15(3)).

However, the duty of a carrier to establish reasonable through routes does not require it to establish routes and rates via all possible gateways and junctions. The duty imposed is succinctly stated in *Routing Restrictions over Seatrain Lines, Inc.*, 296 I.C.C. 767 (1955), as follows:

> "* * * Nevertheless, there is nothing in the act that requires a railroad to establish through routes via all possible junctions or by way of all railroads or water lines with which it might connect, or between all points or areas which might be reached through those connections. *On the contrary, the law is definitely that a carrier has the initial duty and the right to select the through routes over which it holds out to transport through traffic and participate in the through rates.* * * *
>
> "The law imposes certain obligations upon a carrier which joins with its connecting carrier in establishing a through route. *It is not unreasonable for such a carrier to refuse to assume those obligations over all routes, and it cannot be required under the law to assume those obligations over a particular route merely because a shipper or connecting carrier selects it.* In this connection it

[11] While the Western Pacific alleged a violation of this section, the Commission found that establishment of through routes and joint rates was not shown to be necessary or desirable in the public interest, and Western Pacific does not challenge this finding.

> is noteworthy that for many years the duty imposed by section 1(4) upon common carrier by railroad included the 'duty to establish through routes,' and it was not until 1940 that Congress deliberately modified that paragraph so as to restrict the provision to 'reasonable through routes.' " (p. 744) (Emphasis supplied.)

Despite the fact that the prohibition against discrimination relates solely to "rates, fares, and charges" between "connecting lines," the Western Pacific and the United States repeatedly urge that the appellee carriers are discriminating against the Bieber route.[12] At the outset, a sharp distinction must be drawn between a "route" and a "connecting line." The duties enjoined by Section 3(4) of the Act are imposed for the benefit of "connecting lines" not "routes" or even "competing routes."

The Western Pacific and the United States simply are attempting to amend this provision by substituting the term "route" for the statutory term "connecting lines." The term "line" means "an operating unit under one management." *Regenhardt Const. Co.* v. *Southern Ry. in Kentucky*, 297 Ky. 840, 181 S.W. 2d 441, 444 (1944). The terms "route"[13] and "through route"[14] are used throughout Part I of the Act. In fact, the Act refers to lines making up the "through route"

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[12] Brief for Appellants pp. 3, 15, 19, 20, 21, 22, 54, 58, 60, 63, 64, 65, 66, 69, 73, 74; Brief for the United States pp. 2, 6, 7, 12, 13, 15, 16, 21, 29, 30.

[13] 49 U.S.C. §§1(1), 1(2), 6(1), 6(12).

[14] 49 U.S.C. §§1(4), 6(1), 15(3), 15(4), 15(8).

as "participating carriers" not as "connecting lines" (49 U.S.C. §1(14)). At no point in the Act is the term "connecting line" used either together or interchangeably with the term "route" or "through route."

In the Mann-Elkins Act of July 18, 1910, Congress amended Section 4, the long and short haul provision of the Act, by adding after the words "over the same line" the additional words "or route," thus extending the prohibition against accepting a greater charge for the shorter than for the longer haul to the same "route" as well as the same "line" (36 Stat. 547). This amendment resulted in a new and broader interpretation of the Act with the result that it was held, for the first time, to embrace instances where carriers join their lines and thus form a route. *Davis* v. *Parrington*, 281 Fed. 10 (9th Cir.), rev'd on other grounds, 264 U.S. 403 (1924).

The Western Pacific attempts to bring itself within the term "connecting lines" as used in Section 3(4) of the Act by distorting the term to include any "continuous series of lines where the traffic on one could physically move onto the tracks of the others" (p. 19). In short, "connecting line" should be read as "any line." The United States which supports the Western Pacific is apparently unable to subscribe to such a request for judicial legislation. In an attempt to include the Western Pacific and yet ascribe some meaning to the qualifying adjective "connecting," it suggests that "connecting line" includes any road which forms "a continuous route connecting" with appellees "so long as all the par-

ticipants in the continuous connecting route are willing to cooperate in providing through transportation" (p. 16). The obvious conflict between these two positions will be considered further, *infra* p. 37, et seq.

The Western Pacific presents a labored historical argument (pp. 23-29) in a vain attempt to bolster its position and, finally, declares that the legislative history affirmatively supports its interpretation (p. 59). There is simply no substance to this contention, as the following analysis discloses.

The term "connecting lines" in Section 3(4) of the Act had its origin in Section 3, paragraph two, of the original Act to Regulate Commerce of 1887 (24 Stat. 380). Despite two amendments[15] to this section the term "connecting lines" has never been changed. The original Act, Section 3, paragraph two, provided:

> "Every common carrier * * * shall * * * afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such com-

[15]February 28, 1920, C. 91 §405, 41 Stat. 479, which renumbered the provision as paragraph 3, eliminated the final clause and added a prohibition against prejudicing a connecting line in the distribution of unrouted traffic and September 18, 1940, C. 722, Title I, §5(e), 54 Stat. 903, which renumbered the provision as paragraph 4 and defined the term "connecting line" to include, in addition to railroads, the connecting lines of any common carriers by water subject to Part III of the Act.

> mon carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business." (p. 380)

The term "routes" was also employed in the original Act in Section 6, which required the publishing of rates, fares and charges, and provided that where passengers or freight pass over continuous lines "or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission." (Id. at 381). It is thus clear that both in the original and the present Act the term "connecting lines" and the term "routes" are treated as separate and distinct terms.

Because a statute "cannot be divorced from the circumstances existing at the time it was passed, and from the evil which Congress sought to correct and prevent,"[16] we will briefly consider the common law duties involving connecting lines to demonstrate that the Commission's decision is entirely consistent with the statutory purpose.

At common law, it was the duty of a carrier to transport a shipment safely to the end of its line and then deliver it to the next carrier who was also under a corresponding duty to receive and carry it. *Railroad Co. v. Manufacturing Co.*, 16 Wall. 318, 324 (1872);

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[16] *United States* v. *Champlin Rfg. Co.*, 341 U.S. 290, 297 (1951).

Myrick v. *Michigan Central R. R. Co.*, 107 U.S. 102, 106 (1882).[17] Carriers were not required even to make track connections[18] or to enter into contracts with other carriers for joint routes and rates. *Little Rock & M. R. Co.* v. *St. Louis, I. M. & S. Ry.*, 41 Fed. 559, appeal dismissed 149 U.S. 779 (1893); *Chicago & N. W. Ry. Co.* v. *Osborne*, 146 U.S. 354 (1892). A railroad had the power to locate its own stopping places and could not be required to stop at another railway junction and interchange business nor was it required to give one connecting line the same facilities and the same rates that it accorded to another line with which it had entered into special contract relations for a continuous movement and had arranged facilities accordingly. *A. T. & S. Railroad* v. *D. & N. O. Railroad*, 110 U.S. 667, 685 (1884).

It is thus evident that at the time the Act was passed, carriers were not obligated to interchange traffic with each other even at a direct physical connection if one line had already provided another point for the interchange of traffic. There was no requirement to establish through routes and rates. In fact, a carrier could enter into a through route arrangement with one connecting line and refuse to enter into similar arrangements with another line with which it connected at the same point. These were the problems at which Section 3(2) of the original Act were directed, namely, to insure that those lines which had a direct physical connec-

[17] The obligation of an initial carrier under the English law continued throughout the entire route. (*ibid.*)

[18] *Wisconsin &c. R'd Co.* v. *Jacobson*, 179 U.S. 287, 296 (1900).

tion received the same treatment provided, of course, a similarity of circumstances and conditions existed as between the connecting lines.

Western Pacific quotes briefly from the Senate Report[19] dealing with the 1886 bill (p. 25) and a statement of Senator Cullom[20] also pertaining to the 1886 bill (p. 26). Appellants failed to point out that the 1886 bill did not contain the provision involved in the instant case, namely, the provision against discrimination in "rates and charges" between "connecting lines," which is found for the first time in the Conference Report of 1887. It is thus evident that Senator Cullom's remarks relate solely to providing reasonable interchange facilities which, perforce, relate to lines that have a direct physical connection. Moreover, the only legislative explanation of this provision prohibiting discrimination in "rates and charges" between "connecting lines" is the remarks of Senator Spooner which are quoted in the brief of the Interstate Commerce Commission.[21] This explanation clearly indicates that the provision was intended for application to lines which have a direct physical connection.

The English statute and cases to which Western Pacific refers (pp. 26-29) furnish no support for its position. The term "continuous line of railroad communications," employed in the English statute, does not appear in our Act. It apparently was rejected in

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[19] S. Rep. No. 46, 49th Cong., 1st Sess., 215-216 (1886).

[20] 17 Cong. Rec. 3472 (1886).

[21] 18 Cong. Rec. 653, App. 3 (1887) (remarks of Senator Spooner).

favor of the term "connecting lines," which was not used in the English statute. It will also be noted that the English statute makes no reference to rate discrimination between "continuous lines of railroad communications." In interpreting Section 3, paragraph two, of the original Act (24 Stat. 380) the court stated that the English statute and cases were "not of much assistance. The English act is different from ours. * * * and the difference has been construed as substantial." *Oregon Short-Line & U. N. Ry. Co.* v. *Northern Pac. R. Co.*, 61 Fed. 158, 161 (1894), appeal dismissed 164 U.S. 703.

The early state statutes and cases to which Western Pacific refers (pp. 28, 29) are irrelevant and of no assistance. None of the statutes involved are even remotely similar to Section 3 (4) of the Act. None of the cases cited involved factual situations which have any resemblance to the instant proceeding. Moreover, at least some of these cases actually involved a direct physical connection.[22] Finally, an imposing number of state cases can be cited to support the proposition that the adjective "connecting" requires a direct physical connection.[23]

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[22] For example, in *Philadelphia & E. R. R.* v. *Catawissa R. R.*, 53 Pa. 20, 61 (1866), the court simply held that two roads of different gauges which physically intersected were connected.

[23] *Georgia R. & Banking Co.* v. *Maddox*, 116 Ga. 64, 42 S.E. 315 (1902); *Logan* v. *Central R. R.*, 74 Ga. 684 (1885); *Texas & N. O. R. Co.* v. *Gulf & I. Ry. Co.*, 54 S.W. 1031, 1033 (1899), aff'd 93 Tex. 482 and 56 S.W. 328; *International & G. N. R. Co.* v. *Railroad Com. of Texas*, 86 S.W. 16, aff'd 99 Tex. 332, 89 S.W. 961 (1905); *Missouri Pac. Ry. Co.* v. *Young*, 25 Neb. 651, 41 N.W. 646 (1889).

We have demonstrated that there is nothing in the provisions of Section 3(4), its legislative history, or in the common law background against which the statute was enacted that even by the slightest inference could be construed to support the Western Pacific contention that a "connecting line" means "a continuous series of lines where the traffic on one could physically move onto the tracks of the others." (p. 19). In fact, the language of Section 3(4) and its legislative history unequivocally support the Commission and District Court's decisions.

B. *The Atlantic Coast Line Case Supports the Decision.*

Both Western Pacific and the United States analyze the decision of this Court in *Atlantic Coast Line R. Co.* v. *U. S.*, 284 U.S. 288 (1932), in a fruitless attempt to sustain their position (App. brf. pp. 30-40; U.S. brf. pp. 21-26). This case provides solid support for the decision of the Commission and the District Court, as the following discussion indicates.

The decision of this Court in *Atlantic Coast Line R. Co.* v. *United States, supra*, had its genesis in the application of the Atlantic Coast Line (Coast Line) and the Louisville & Nashville to lease the Carolina, Clinchfield & Ohio Railway (Clinchfield) which extended between Elkhorn City, Kentucky, and Spartanburg, South Carolina, where it connected with the Charleston & Western Railroad (Charleston), also owned by the Coast Line, which extended via Greenwood,

South Carolina, to Augusta, Georgia, and with the Piedmont & Northern Railway (Piedmont), an independent line which extended only to Greenwood. *Clinchfield Railway Lease*, 90 I.C.C. 113 (1924). The Clinchfield formed a link in many existing routes between points in the southeastern states and points in other parts of the country. Among the objecting lines in the lease proceedings was the Georgia & Florida Railroad (Georgia) whose line extended as far north as Augusta. It stated that it was extending its line to Greenwood to form a direct connection with the Piedmont and that if the Coast Line were permitted to lease the Clinchfield, it would discriminate against this extension in favor of the Charleston.

Despite these objections, the Commission approved the lease subject to a number of traffic conditions, two of which were involved in the subsequent proceeding herein; namely, Condition 3 which required complete neutrality on the part of the Clinchfield in the handling of all traffic and Condition 4 which required that the Clinchfield be used as a link for through traffic by all carriers "now connecting or which may hereafter connect" with the line of the Clinchfield (*ibid* at 133-134).

Following the lease proceeding, the Georgia applied for, and was granted, authority to extend its line from Augusta to Greenwood, thus forming a direct link with the Piedmont in competition with the Charleston. *Reorganization of Georgia & Florida Ry.*, 117 I.C.C. 473 (1926). The Commission's report and order revealed that the extension was built for the express purpose of

permitting the applicant to participate with the Piedmont in a large volume of through traffic handled by the Clinchfield and available under the existing routes and rates (*ibid* at 475). The Coast Line, though notified, did not oppose the application (*ibid* at 479).

Then immediately prior to the opening by the Georgia of its Greenwood extension on June 1, 1929, the Coast Line and the Charleston filed 337 schedules which sought to cancel the existing through routes with the Piedmont and Georgia, effective May 20, 1929, and later dates. *Restriction in Routing between Greenwood and Augusta*, 165 I.C.C. 3 (1930). Upon protest of the Piedmont (the direct physical connection) and the Georgia (a participant in existing through routes and joint rates), 303 of these schedules, or all of the schedules which specifically named the Piedmont and the Georgia as present participating carriers in the established routes with the Clinchfield, were suspended and finally ordered cancelled, with the result that the traffic continued to move over the extension under the existing tariffs. The remaining schedules, 34 in number, became effective after a brief delay because they did not concern existing through routes in which the Piedmont and the Georgia presently participated with the Clinchfield (*ibid* at 4). The Commission properly held that the cancellation of the joint rates resulted in the closing of existing routes in violation of the traffic conditions imposed in Condition 4 of the lease proceeding. *Clinchfield Railway Lease*, *supra*. In concluding that the cancellation of the through rates violated the

conditions of the lease, the Commission held that the Georgia was a connecting line of the Clinchfield despite the fact that there was not a direct physical connection because it participated in through routes with the Clinchfield under the existing schedules which the Clinchfield sought to cancel, in so doing, the Commission stated:

> "There is no warrant for limiting the meaning of 'connecting lines' to the direct connections of the Clinchfield. The term is commonly used in referring to the lines in general making up a through route. There is in fact no other convenient term. * * *" (165 I.C.C. 15-16)

The district court affirmed the Commission's order and in response to appellants' argument that Condition 4 of the lease merely required that the Clinchfield be maintained as an open route for carriers "then directly connecting therewith or, at the most, for carriers which might under the approval of the Commission be allowed to make such direct connection thereafter," the court stated:

> "And, as to condition 4, it certainly could not have been intended to restrict the requirement of neutrality for the benefit of those roads having direct connection with the C., C. & O. when, as said by the commission, the term 'connecting lines' is commonly used 'in referring to the lines in general making up a through route.' " (pp. 241-242)

This Court, in affirming the decision of the district court, held that the Georgia was a connecting line of the Clinchfield despite the absence of a direct physical connection because it participated with the Clinchfield in through routes and rates. *Atlantic Coast Line R. Co.* v. *U. S.*, 284 U.S. 288. This Court's definition of a "connecting line" which is entirely consistent with, and fully supports, the result reached in the instant proceeding was applied specifically with reference to Section 3(4) of the Act in Atchison, Topeka & Santa Fe Ry. Co. v. City of Chicago, 240 F. 2d 930, 937 (7th Cir.), aff'd 357 U.S. 77 (1958).

Western Pacific concludes its treatment of *Atlantic Coast Line R. Co.* v. *U. S.*, *supra*, by citing its sequel *Georgia & F. R.* v. *Atlantic Coast Line R. Co.*, 191 I.C.C. 489 (1933) (pp. 39-40). The United States discusses the same case at page 23, fn. 12, and at page 25, fn. 15, and erroneously asserts that it is contrary to the Commission's decision in the instant case. That case involved a joint complaint by the Piedmont, a direct connection of the Clinchfield at Spartanburg, and the Georgia, an indirect connection but a participant in a large number of through routes and rates with the Clinchfield and, hence, a connecting line under the definition adopted by the Commission and the District Court in the instant case, charging that the refusal of the defendants to participate with complainants between Spartanburg and Augusta on the same basis as the Clinchfield participated with other connections violated the conditions of the Clinchfield lease and Section 3(3) (now 3(4)) of the Act (*ibid* at 490, 492). The Commission so found (*ibid* at 499, 500). Thus, the decision is entirely consistent

with, and fully supports, the Commission's position in the case at bar.

C. *The Water Carrier Cases Support the Decision.*

Western Pacific next contends (pp. 43-48) that the decisions of this Court and the Commission involving inland water carriers support its extraordinary construction of the term "connecting line." The United States contends that the same cases support its position (p. 26). On the contrary, as we will show, these decisions involving as they do a direct connection, clearly support the decision of the Commission and the lower court.

In *American Barge Line Co.* v. *Alabama G. S. R. R.*, 296 I.C.C. 247 (1955), complainant inland water carriers sought a reduction in the rail rates on ex-barge grain from various river ports from the "local" basis of rates to the "proportional" or "reshipping" basis of rates which applied from the same river ports on ex-rail traffic. Complainant water carriers contended, *inter alia*, that the refusal of the railroads serving the river ports to accord the same basis of rates on grain brought to the ports by barges as applied on grain transported to the ports by rail violated Section 3(4) of the Act. The Commission denied all relief on the grounds, *inter alia*, that the barge lines were not "connecting lines" of the rail carriers within the meaning of Section 3(4) of the Act. Three years later it affirmed this decision (303 I.C.C. 463). The following year it modified its order

so as to grant relief from certain Tennessee River ports (306 I.C.C. 167). On appeal, the district court reversed, holding that the barge line involved was a connecting line of the defendant railroads within the meaning of Section 3 (4) of the Act. *Arrow Transportation Co.* v. *United States*, 176 F. Supp. 411, aff'd *per curiam* 361 U.S. 353 (1959). In so doing, the court stated:

> "The contention is advanced with apparent seriousness by some of the intervening defendants that Arrow is not a connecting carrier in relation to the railroads which serve the Tennessee River ports. This argument is wholly without merit. At each of the Tennessee River ports there are facilities by which grain can be transferred directly from barges into rail cars, but the normal type of transfer is through an elevator. We hold that Arrow is a connecting carrier of the outbound rail carrier when it delivers grain in its port-to-port service to a river elevator or other unloading facility which has a rail connection for the subsequent reshipment of that grain. * * *" (p. 419).

It is thus evident that a physical connection was present, to the extent that is possible between these two separate modes of transportation, and it was on this basis that the court held the barge line to be a "connecting line" of the rail carriers within the meaning of Section 3 (4) of the Act.

Appellants also rely upon *Interstate Commerce Commission* v. *A. L. Mechling Barge Line*, 330 U.S. 567 (1947), and *Dixie Carriers, Inc.* v. *United States*, 351

U.S. 56 (1956).[24] Both cases involve the maintenance of rates on ex-barge traffic on a higher level than ex-rail traffic. In both cases this Court held the maintenance of the higher basis of rail rates without proof of higher costs for handing such traffic constituted discrimination against the ex-barge traffic in violation of the National Transportation Policy which requires that the Act be administered so as to recognize and preserve the "inherent advantages" of all modes of transportation subject to the Act (54 Stat. 898, 899; 49 U.S.C. preceding notes §§ 1, 301, 901). In both of these cases a direct physical connection was available and, therefore, they are fully consistent with the decision of the Commission in the instant proceeding.

The water carrier cases relied on by the Western Pacific all involve a direct physical connection, to the extent it is possible, between two separate modes of transportation, and, therefore, it was not necessary to find that through routes presently existed in order to bring them within the purview of Section 3 (4) of the

[24] In the *Mechling* case, *supra*, the commodity involved was grain and the point of physical connection for transfer of the lading was Chicago. In fact, until 1939 the rail rates for movement of the grain beyond to the East were the same whether the commodity was brought to Chicago by barge or rail. The barge lines were attacking a three-cent higher rail rate that applied on ex-barge as distinguished from ex-rail grain. In the *Dixie Carriers* case, *supra*, the commodity involved was sulphur and the point of physical connection for transfer of the lading from barge to rail was East St. Louis. The railroads refused to enter into joint rail-barge rates at East St. Louis and insisted upon their local rate to destination. However, the rail carriers maintained joint through rates with each other over East St. Louis. Barge lines sought a rail rate beyond St. Louis on the same basis as applied in the case of an all-rail movement.

Act following the 1940 amendment (54 Stat. 903). Rather than aid the Western Pacific, these cases also support the Commission's decision.

D. *The Switching Cases Furnish No Support for Western Pacific's Novel Contention.*

Western Pacific next contends (pp. 48-51) that *Chicago, I & L. Ry.* v. *United States*, 270 U.S. 287 (1926),[25] supports its position. The District Court properly found its reliance on this case was "misplaced" because it "involved reciprocal switching arrangements and presented no question of whether the carriers * * * were 'connecting lines' for Section 3(4) purposes." (R. 734, 230 F. Supp. 855). That case, popularly known as the "Michigan City switching case," involved the refusal of three railroads which served Michigan City, Indiana, to enter into reciprocal switching arrangements with another line, namely, the South Shore, which served the same station on the same basis as they maintained with each other; rates were not involved.[26]

The three defendants; namely, the Pere Marquette, the Monon and the Michigan Central, asserted that a difference in transportation circumstances and condi-

[25] This case arose under the Transportation Act of 1920 which, unlike the present Act, required "All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, * * *" (41 Stat. 479).

[26] *Chicago, Lake Shore & S. B. Ry. Co.* v. *L. E. & W. R. R. Co.*, 88 I.C.C. 525, 526 (1924); Brief for the United States, p. 4, *Chicago, I. & L. Ry.* v. *United States, supra.*

tions existed because the only carrier with whom the South Shore enjoyed reciprocal switching arrangements, namely, the Lake Erie & Western, had to switch the South Shore's cars from 1.38 miles to 3.88 miles to the defendants' lines. The South Shore was within the switching district at Michigan City and the three defendant lines switched cars to and from the South Shore as an industry but not as a carrier (270 U.S. at 291). Thus, the defendants' lines reached the lines of the complainant under existing switching arrangements.[27]

The Commission properly held that the defendants' refusal to switch plaintiff's cars while switching the traffic to all other lines established a violation of Section 3 of the Act. *Chicago, Lake Shore & S. B. Ry. Co.* v. *L. E. & W. R. R. Co.*, 88 I.C.C. 525. The district court affirmed without a written opinion. On appeal to this Court, the question presented, as stated in the brief of the United States, was "Does the non-inclusion of the South Shore in the reciprocal switching arrangements established by the carriers serving Michigan City constitute unjust discrimination against the South Shore"?[28] This Court affirmed holding that if discrimination exists, the order removing it may extend to every carrier that participates in inflicting the injury. The Michigan City switching case did not involve a request for rates as does the instant proceeding, but

[27] Brief for the Interstate Commerce Commission at pp. 24, 25 and 41, *Chicago, I. & L. Ry.* v. *United States, supra.*

[28] Brief for the United States, p. 10, *Chicago, I. & L. Ry.* v. *United States, supra.*

simply a request for inclusion in an existing reciprocal switching arrangement at a station physically served by the complainant. Obviously, it furnishes no support for the Western Pacific's position.

Appellants cite *Denver & R. G. W. R. Co.* v. *Union P. R. Co.*, 351 U.S. 321 (1956), in support of their contention that "a 'through route' in the sense that the term is used in the Act itself is not essential to a finding of discrimination under §3(4)" (pp. 52-53). In that case the Union Pacific had not accorded to the Rio Grande at Ogden, a carrier with which it had a direct physical connection, the same basis of rates it had accorded to the Bamberger Railroad at that point. *Union Pacific Railroad Co.* v. *United States of America*, 132 F. Supp. 72, 81 (1954). That case simply holds that "through routes" are not essential to a finding of discrimination under Section 3(4) of the Act if a direct physical connection is present; therefore, it supports the position of the Commission and the District Court in the instant proceeding.

Appellants also cite *St. Louis S. W. Ry. Co.* v. *United States*, 245 U.S. 136 (1917), and *United States* v. *Illinois Cent. R. R.*, 263 U.S. 515 (1924), both of which arose under Section 3(1) of the Act to support their contention (pp. 53, et seq.). Section 3(1) of the Act prohibits discrimination between persons, companies, localities, ports, gateways, transit points, regions, districts, territories or particular descriptions of traffic and specifically provides that the provision "shall not be construed to apply to discrimination, prejudice,

or disadvantage to the traffic of any other carrier of whatever description." Section 3(1) unlike Section 3(4) of the Act does not require connecting-line status and, therefore, neither of these cases furnish any support for appellants' position.

Western Pacific also relies on *Pennsylvania Co.* v. *United States*, 236 U.S. 351 (1915), to support its position (pp. 55-57). That case involved a request by the Rochester Company which served New Castle, Pennsylvania, for non-discriminatory switching arrangements with the Pennsylvania at that point. The Pennsylvania maintained reciprocal switching arrangements with all of the carriers serving that point except the Rochester Company. The Court stated that there were two points of physical connection between the lines of the Rochester Company and the Pennsylvania within the switching limits of the station (*ibid* at 359). The Court further stated that the Rochester cars were brought to an actual physical connection with the Pennsylvania (*ibid* at 363). Despite the physical connection, the Pennsylvania refused to switch the cars of the Rochester Company 1,000 feet to its depot facilities. This case involved a direct physical connection between the complainant company, which sought simply nondiscriminatory switching arrangements, with the Pennsylvania and, therefore, is consistent with and fully supports the Commission's decision in the case at bar.

E. *The Unique Definition Fashioned by the United States Is Not Supported by the Statute or the Cases and Is Unworkable.*

Unlike the Western Pacific which seeks to extend the term "connecting line" as used in Section 3(4) of the Act to include any line, the United States attempts to ascribe some meaning to the qualifying adjective "connecting" and still include the Western Pacific. It therefore suggests that the term includes any road which forms "a continuous route connecting" with appellees "so long as all the participants in the continuous connecting route are willing to cooperate in providing through transportation." (pp. 16, 21, 29).

We shall demonstrate that this extraordinary definition, which apparently was fashioned for the purpose of this case, has no statutory or judicial precedent and is completely inappropriate.

In attacking the comprehensive definition adopted by the Commission and affirmed by the District Court, the United States poses three hypothetical situations (pp. 18-21) which it asserts established the "arbitrary nature of the Commission's definition" (p. 18).

The hypothetical examples posed by the United States serve to demonstrate the position of Section 3(4) in the over-all legislative pattern.

Unless a complaining carrier either has a direct physical connection or presently participates in existing through routes with the defendant carrier, it is not similarly situated and, hence, cannot be the subject of discrimination which, perforce, requires equality of

circumstances and conditions. Section 3(4) is not the touchstone for the solution of all route or rate disputes. If new routes and rates are required in the public interest between carriers not enjoying a direct physical connection or not presently participating in through routes and rates, necessary routes and rates may be established under Section 15(3) of the Act on the Commission's own initiative or on complaint of an allegedly aggrieved carrier.

In the present situation, if the Bieber route carriers are, in fact, being discriminated against, then logically all Bieber route carriers should be complainants. Great Northern is the key carrier in the first two hypothetical examples advanced by United States, and the United States rather boldly asserts that if Great Northern were the complaining railroad, it would be entitled to precisely the relief sought by the Western Pacific (p. 19). This is a large presumption and simply serves to illustrate the fatal defect in the definition of "connecting lines" urged by the United States. If the Great Northern were the complainant, it would be required to establish, first, the fact of its direct physical connection with Northern Pacific and Union Pacific at Portland[29] and, second, the similarity of circumstances and conditions as between the sought and the existing routes. While both the Great Northern

[29] As a complainant Great Northern would be required to develop the circumstances of direct connection with appellee carriers at Portland, which apparently takes place over the intervening agency of Oregon Trunk Railway, Spokane, Portland and Seattle Railway Company and Northern Pacific Terminal Company (R. 37, 268, 269).

and the Santa Fe admitted their willingness to participate in the sought joint rates (R. 8-9, 11-12), they did not assist the Western Pacific either before the Commission or the District Court nor did they present any evidence.

The Western Pacific concedes that to prevail under Section 3(4) of the Act it is essential that it establish a similarity of circumstances and conditions as between the allegedly preferred and the allegedly prejudiced line (p. 74). Because the Western Pacific does not directly connect with the appellees and does not participate with them in through routes, it would be difficult in the extreme to establish a similarity of circumstances and conditions in the absence of the active participation in the proceeding of the Great Northern and the Santa Fe. The hypothetical examples suggested by the United States support rather than impeach the definition adopted by the Commission in this proceeding.

The United States asserts (pp. 24, 25) that the Commission and the District Court improperly defined the term "through route" in holding that through routes do not presently exist. The definition adopted by the Commission and the District Court was prescribed by this Court in *Thompson* v. *United States*, 343 U.S. 549 (1952). The United States contends that the definition is irrelevant for two reasons, first, because it relates to Section 15(4), the short haul provision of the Act, which "bears no relationship to the existence of discrimination between carriers, the evil at which Section 3(4) is directed" (p. 24). The definition enunciated

in the *Thompson* case, *supra*, affirmed the earlier definition adopted by this Court in *St. Louis S. W. Ry. Co.* v. *United States*, 245 U.S. 136 (1917), which did involve Section 3 as well as Section 15 of the Act.[80] Second, the United States suggests that if the definition is relevant, then the term "through route" relates to the rates between the complainant and the intermediate carriers and not with the line that is alleged to have discriminated. In support of this erroneous contention it refers to *Atlantic Coast Line R. Co.*, *supra*, and states that the Georgia & Florida was "held to connect with the defendant, not because of any pre-existing routes with the *defendant*" (p. 25), but because of routes with the intermediate carrier. As we pointed out earlier in this brief (pp. 22-24), the Georgia & Florida was a party to the same existing through routes and rates both with the Piedmont & Northern and with the Clinchfield. If it were not, there would have been no need to file the hundreds of schedules involved in the litigation to cancel its participation in such routes. To contend that the term "through route" as employed by the Commission in that proceeding, which language was adopted by Mr. Justice Brandies in this Court's opinion, relates solely to existing routes with the intermediate carrier rather than the same existing routes with the carrier charged, is the most unwarranted sort of speculation. In fact, if such speculation were justified the 34 sched-

[80] This definition is the same as that adopted by the Commission in *Through Routes and Through Rates*, 12 I.C.C. 164, 166, as well as that stated by the Commission in its report to Congress, Twenty-First Annual Report of the Interstate Commerce Commission 75-76 (1907).

ules which became effective in *Restriction in Routing Between Greenwood and Augusta*, 165 I.C.C. 3, 4 (1930) because they did not affect existing routes and rates between the Clinchfield and the Piedmont & Northern and the Georgia & Florida would also have been found unlawful. Further, the Commission's interpretation of the term does not permit any carrier to insulate itself against a charge of discrimination, rather, it merely places an outer limit on its meaning and attributes a congressional purpose to the use of the qualifying adjective "connecting."

Western Pacific, while avoiding an explicit definition of "connecting line" status as it has throughout this proceeding, suggests that Section 3(4) may be invoked in any instance where rates available over one route are not available over a competing physically available route (p. 21). This construction is far broader than appellants sought in the District Court where it indicated that its connections would not necessarily be connecting lines under Section 3(4) of the Act.[31]

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[31] During oral argument before the District Court even appellants recognized the hazard of such a construction for their counsel stated as follows:

> "We are not saying that under Section 3(4) our connections to the southwest would necessarily be entitled to attack this particular act of discrimination." (R. 682).

The Western Pacific's change of position between the District Court and this Court and its change of position before the Commission make Mr. Justice Jackson's pointed comment in *Orloff* v. *Willoughby*, 345 U.S. 83, 87 (1953), most appropriate: "We grant certiorari, and in this Court the parties changed positions as nimbly as if dancing a quadrille."

In contrast to appellants' all-inclusive construction, the United States suggests that the term be defined to include all carriers forming a continuous route which connects with the line charged provided "all the participants in the continuous connecting route are willing to cooperate in providing through transportation in combination with the defendant" (p. 16). Obviously, the United States rejects Western Pacific's contention that "any line" is a "connecting line" within the meaning of Section 3(4) of the Act.

The interpretation suggested by the Western Pacific is patently absurd. Such a construction would permit any railroad to invoke Section 3(4) of the Act, regardless of the need for the establishment of additional routes under Sections 1(4) and 15(3) of the Act, simply by asserting that it physically connects with other lines which ultimately connect with the carrier with whom the through routes and rates are sought at some distant point; consequently, the failure of the line charged to enter into joint through rates with the complaining line would constitute a violation of Section 3(4) of the Act. Complete nullification of the adjective "connecting" would result if the Western Pacific's position were adopted by this Court.

The definition suggested by the United States is also subject to many infirmities. How do you determine when the connecting line is part of a "continuous connecting route" or a "connecting route"? (pp. 16, 21,

29). The term "continuous connecting route" or "continuous route" cannot be found in the Act,[32] nor was it used in the English statute which employs the term "continuous line of railroad communication."[33] Should we construe the term "continuous connecting route" to mean a "through route"? That seems unlikely because the United States contends that the accepted definition is irrelevant in a Section 3(4) proceeding (p. 24). The United States then inconsistently asserts in the following paragraph of its brief that the establishment of through routes with the intervening carriers results in forming a route "the whole of which connected with the defendant" (p. 25). Thus, we are left to speculate as to the meaning of "continuous connecting route."

This novel term which the United States has created to assist the Western Pacific presents additional complications because it is qualified by the phrase "so long as all the participants in the continuous connecting route are willing to cooperate in providing through transportation in combination with the defendant" (p. 16). Thus, if one of the lines is unwilling to cooperate in providing transportation, the complainant would not be a "connecting line" within the meaning of Sec-

[32] Appellees were unable to find any cases defining the term "continuous connecting route" and only one case defining the term "continuous route," namely, a Pennsylvania case which held that the term as used in a state act requiring the lessor and lessee railroads to form a continuous route did not require an absolute passage of the same car from one railroad to the other without break or interruption. *Appeal of Pittsburgh & B. Traction Co.*, 165 Pa. 468, 30 Atl. 931 (1895).

[33] The Railway and Canal Traffic Act of 1854, 17 & 18 Vict. c. 31, sec. 2.

tion 3 (4) of the Act. If such lines were complainants, their willingness to provide the transportation would be self evident. However, if the definition proposed by the United States were adopted, the intermediate lines would not be required to be complainants and could decide at any time that they are not "willing to cooperate in providing through transportation in combination with the defendant" (p. 16) and thus destroy the connecting-line status of the complaining line. Such an illusive test furnishes no sound basis for determining connecting-line status of railroads under Section 3 (4) of the Act. It seems apparent that this definition was expressly fashioned to meet the circumstances of this case and reluctantly adopted by the United States in a desperate attempt to bolster appellants' vulnerable position.

The unworkable, though dissimilar, interpretations of the term "connecting line" advocated by the Western Pacific and the United States contrast sharply with the definition adopted by the Commission and the Court which includes any line having a direct physical connection with the appellees or any line regardless of where situated if it participates in through routes with the appellees. In short, this definition requires either a direct physical connection or a business connection before Section 3 (4) is applicable.

Section 3 (4) of the Act imposes many obligations: (1) It requires all carriers to afford reasonable, proper and equal facilities for the interchange of traffic between their respective lines; (2) It requires all carriers

to provide reasonable, proper and equal facilities for the receiving, forwarding and delivering of passengers or property to or from connecting lines; (3) It prohibits all carriers from discriminating in their rates, fares and charges between connecting lines, and (4) It prohibits all carriers from unduly prejudicing any connecting lines in the distribution of freight that is not specifically routed by the shippers. These duties are substantial. Obviously, a carrier cannot provide facilities for interchanging traffic, receiving, forwarding or delivering passengers or property with carriers with whom it has no direct physical or business connection. If it were otherwise, it would impose an overwhelming burden upon all American railroads.

If the Western Pacific's position were sustained, all direct route carriers operating between any two points could be charged with discrimination if they refused to establish through routes with other carriers, literally hundreds of miles away who have never participated in the routes or rates involved and do not have direct physical connections with the direct route lines. The complaining carriers would simply assert that through a number of intermediate carriers they reach the direct route lines and therefore are connecting lines. Rather than engage in prolonged litigation involving the similarity of circumstances and conditions as between the direct lines and the circuitous lines, the lines charged might well agree to establish through routes and rates with the circuitous lines. Thus, Western Pacific's interpretation of the term "connecting line" could result

in a multiplicity of wasteful circuitous routes contrary to the National Transportation Policy which requires the Commission to administer the Act so as to promote "safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers." (54 Stat. 898, 899; 49 U. S. C. preceding notes §§ 1, 301, 901). As the Court stated in *Southern Railway Company* v. *United States*, 167 F. Supp. 747 (D. Ga. 1958), involving the cancellation of certain joint through routes:

> "Use of the words 'economical' and 'economic' in the National Transportation Policy clearly demonstrates the intent of Congress that one of the primary concerns of Congress is to have the Commission give serious attention to the matter of providing economical transportation; that is, transportation at as low rates to the public as may be consistent with the other requirements of the Policy. * * * A significant comment appears in the sub-committee report (on Surface Transportation of the Senate Committee on Interstate and Foreign Commerce) which is part of the Legislative history of this amendment (1958) to the Interstate Commerce Act:
>
> > 'The railroad industry has not, in the subcommittee's opinion been sufficiently interested in self-help in such matters as * * * abolishing of unnecessarily circuitous routes for freight movements.'
>
> "Wasteful operation, regardless of what particular carrier suffers the economic loss temporarily is one of the things to be avoided if the

elimination of the wasteful procedure does not run counter to other mandates of the Act."

The United States asserts that the Commission's definition is contrary to its purpose in creating the Bieber route (pp. 28-29). Nothing could be further from the fact. Through routes and joint rates via the Bieber route were established in 1931 by the Santa Fe, the Western Pacific and the Great Northern, following the extension of the lines of the Western Pacific and the Great Northern approved by the Commission in *Great Northern Ry. Co. Construction*, 166 I.C.C. 3, 170 I.C.C. 399 (R. 626). It was not until this complaint was filed some thirty years later that the Western Pacific contended that it was a connecting line of the appellees within the meaning of Section 3(4) of the Act. The Western Pacific never contended in the *Construction* case that the Northern Pacific or Union Pacific would be required to establish through routes and joint rates with it via Bieber and Portland. The Western Pacific represented that it would establish through routes and joint rates via Bieber with the Great Northern and the Santa Fe which it did upon completion of the line. This is the competition which the Commission's construction order contemplated and provided, namely, the competition via the Bieber route partners, on the one hand, and the Southern Pacific route partners on the other. For a further discussion of the competition the exists between the railroads in this area as the result of the Commission's

order authorizing the line extension see *infra* Part II, pp. 69-71.

The repeated and erroneous assertion by the Western Pacific and the United States that Section 3(4) of the Act can be utilized to prevent discrimination against a route as distinguished from a connecting line, simply fails to properly distinguish between Sections 1(4) and 3(4) of the Act. The duties prescribed by Section 3(4) of the Act extend to connecting lines only and not routes. As the Commission stated in *Nicholson Universal S. S. Co.* v. *Pennsylvania R. Co.*, 203 I.C.C. 637, 647 (1934):

> "Although our power to require the establishment and maintenance of through routes and joint rates has been greatly extended since the enactment of the original Act to Regulate Commerce by section 15(3) and section 6(13) of the present act, *the wording of section 3(3)* [now 3(4)] *has remained substantially the same and does not include within its terms any reference to routes.* * * *" (Emphasis supplied.)

Appellants further contend that the Commission's construction of Section 3(4) of the Act results in a complete anomaly. However, when this section is considered together with Sections 1(4) and 15(3) of the Act, it is entirely consistent with the legislative pattern. The obligation of a carrier engaged in interstate commerce to enter into a contract with another carrier for joint routes and rates was first prescribed by the Hepburn Act of June 29, 1906, which imposed a

duty on all carriers to establish through routes and joint rates and authorized the Commission to establish through routes "provided no reasonable or satisfactory through route exists" (34 Stat. 589). The Mann-Elkins Act of June 18, 1910, greatly expanded the Commission's power by authorizing it to establish alternate through routes subject to certain necessary safeguards (36 Stat. 551). Thus, if a through route is established, either by voluntary action of the carriers involved or by Commission order, the provisions of Section 3(4) of the Act apply, notwithstanding the absence of a direct physical connection at a common interchange. However, until a through route is established, a carrier which lacks a direct physical connection at a common interchange must rely on Sections 1(4) and 15(3) of the Act to establish a through route before it can invoke the provisions of Section 3(4) of the Act.

In essence, the Western Pacific is attempting to accomplish indirectly under Section 3(4) of the Act that which it, admittedly, cannot do directly under Sections 1(4) and 15(3) of the Act, namely, establish new through routes and joint rates. The Western Pacific in abandoning before the Commission its claim under Sections 1(4) and 15(3) of the Act apparently conceded that the Commission properly found that the numerous existing through routes and joint rates are adequate to meet the needs of the shipping public (R. 644, 645).

We submit that there is no escape from the proposition that if the construction of the term "connecting lines" as used in Section 3 (4) of the Act, urged by the appellants, were adopted, the term, of necessity, would embrace every railroad in this nation and, perforce, would make every railroad, regardless of where situated, the connecting line of every other railroad. The Western Pacific's extraordinary construction would result in a multiplicity of circuitous routes, contrary to the public interest and the National Transportation Policy. Further, the unique definition urged by the United States, while not quite as inclusive as appellants, is wholly without precedent and is completely unworkable.

In the last analysis, we have a construction of the statute by the agency charged with its enforcement, which has been acquiesced in by these appellants for approximately 30 years. In such circumstances, the agency's construction is entitled to the greatest weight.[34] Finally, as we have demonstrated, the broad and precise definition adopted by the Commission and affirmed by the District Court is required by the statutory language, its legislative history, the statutory pattern and established judicial precedents and should, therefore, be sustained by this Court.

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[34] *U. S.* v. *Amer. Trucking Ass'ns.*, 310 U.S. 534, 549 (1940); *United States* v. *Bergh*, 352 U.S. 40, 47 (1956); *Adams* v. *United States*, 319 U.S. 312, 314-315 (1943); *U. S.* v. *Citizens Loan Co.*, 316 U.S. 209 (1942); *Inland Waterways Corp.* v. *Young*, 309 U.S. 517 (1940), and *N. Y. Central Securities Co.* v. *U. S.*, 287 U.S. 12, 24 (1932).

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II

The Commission Correctly Determined That the Evidence Did Not Establish Similarity of Circumstances and Conditions and, Therefore, Rate Discrimination Is Not Present.

A. *If the Issue of Discrimination Is Reached, Normal Practice Requires Remand to the District Court.*

As we have demonstrated in Part I, *supra*, the Commission and the District Court correctly determined that the Western Pacific was not a connecting line of the Northern Pacific or the Union Pacific at Portland. In addition, however, the Commission found that the evidence of record did not establish the necessary similarity of circumstances and conditions which would justify equality of treatment at Portland (R. 643, 645). Because the District Court agreed with the Commission on the issue of connecting-line status, it did not find it necessary to resolve the remaining issues presented by appellants' complaint (R. 731, fn. 3). The Western Pacific now makes the extraordinary request that if this Court should find that the Commission and the District Court erred with respect to the connecting-line issue, the Court then proceed to analyze the record and determine, without receiving the benefit of the views of the District Court, that the Commission erred

on the second basis also (p. 64 et seq.).[35] Because of this unwarranted request, appellees are constrained to brief this additional point.

The United States does not concur in this request and points out that it would be the Court's normal practice to remand the case to the District Court for judicial review of the question of discrimination. *F. T. C.* v. *Anheuesr-Busch,* 363 U.S. 536, 542 (1960) (p. 13, p. 31, fn. 8). In a brief discussion, the United States observes that resolution of the second issue requires a factual evaluation not attempted by the District Court and suggests a number of circumstances which would militate against a finding of discrimination even when connecting lines engage in differing rate practices (p. 30, fn. 18).

Appellees suggest that if this Court should reverse the Commission and the District Court on the threshold issue—Western Pacific's status as a connecting line —the normal procedure should be followed and the case be remanded to the District Court for judicial review of the Commission's subsidiary findings and ultimate conclusion that there is no discrimination.

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[35] Western Pacific recognizes the necessity of proving that circumstances and conditions are similar (R. 681, Brief for Appellants, p. 74). This Court has ruled that there must be similarity of circumstances and conditions in discrimination cases arising under Section 3 of the Act. *Ayrshire Corp.* v. *United States,* 335 U.S. 573, 587 (1949); *United States* v. *Illinois Cent. R. R.,* 263 U.S. 515, 524 (1923); *Interstate Comm. Commiss.* v. *B. & O. Railroad,* 145 U.S. 263, 276 (1892).

B. *The Conclusion That There Is No Discrimination Is Fully Supported by the Record.*

In the unlikely event that this Court should decide that remand is not required and proceed to a consideration of the discrimination issue, then appellees submit that under settled principles of judicial review the conclusion of the Commission that Northern Pacific and Union Pacific are not in violation of Section 3(4) of the Act should be affirmed.

Under the doctrine of administrative finality judicial review of an agency decision is limited to questions of constitutional power, statutory authority, and the basic prerequisites of proof. The judicial function is exhausted when there is found to be a rational basis for the conclusions of the administrative body. If there is warrant in the law and facts for what the Commission has done, the Court will not substitute its own view concerning what should be done for the Commission's judgment upon matters committed to its determination. See *Rochester Tel. Corp.* v. *U. S.*, 307 U.S. 125, 139 (1939); *Miss. Valley Barge Co.* v. *U. S.*, 292 U.S. 282, 286 (1934); *U. S.* v. *Pierce Auto Lines*, 327 U.S. 515, 536 (1946); *Universal Camera Corp.* v. *Labor Bd.*, 340 U.S. 474, 488 (1951). The Court has declared that whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that has been confided by Congress to the judgment and discretion of the Commission and upon which its decisions are

not to be disturbed by the courts, except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power. *Board of Trade* v. *United States*, 314 U.S. 534, 546 (1942).

The Commission fully discharged its administrative responsibility by applying the proper standard by which discrimination should be judged, drawing subsidiary findings from an evaluation of the evidence and reaching its ultimate conclusion in the exercise of its specialized judgment. We will first demonstrate that the Commission applied the correct standard to resolve the question of discrimination and, second, that the evidence fully supports the Commission's determination.

1. Commission Standard for Determining Similarity of Circumstances and Conditions Has Administrative Precedent and Judicial Approval.

In its Discussion and Conclusions, the Commission held that Section 3(4) requires equality of treatment, but that equality of treatment is determined by similarity of circumstances and conditions (R. 640). Having stated the general principle, the Commission reviewed the evidence, made subsidiary findings, reached the conclusion that the evidence does not establish the similarity of circumstances and conditions which justifies equality of treatment, and entered its final conclu-

sion that Northern Pacific and Union Pacific were not in violation of Section 3 (4) of the Act (R. 643, 645).

The proper test of similarity of circumstances and conditions in a Section 3 (4) case is essentially a simple one—it calls for a comparison of transportation conditions underlying the rates in issue. When, as here, alleged discrimination arises from the difference between higher combination rates over one route compared with lower joint rates over another route, the transportation conditions over both routes must be compared to determine if there is such a similarity as to require equality of rate treatment. This is what the Commission did. It compared transportation conditions on the route over which the *higher combination rates* apply—Santa Fe and Western Pacific to Bieber, Great Northern to Portland and then Northern Pacific or Union Pacific beyond between points in California and points in the Northwest with transportation conditions on the route over which the *lower joint rates* apply—Southern Pacific to Portland then Northern Pacific or Union Pacific beyond between the same points in California and the same points in the Northwest. As a result of this comparison, the Commission determined that the evidence before it did not establish the necessary similarity of circumstances and conditions which justifies equality of treatment (R. 643).

The Commission relied on *Routing, Coal From Origins on Louisville & N. R.*, 313 I.C.C. 752, 758 (1961) (R. 640), sustained on appeal in *Atlantic Coast Line Railroad Co.* v. *United States*, 205 F. Supp. 360 (M. D.

Ga.), aff'd *per curiam* 371 U.S. 6 (1962), for the applicable test to determine the discrimination issue.[36] In that case, the Commission compared transportation factors over complete routes from representative origins to representative destinations, not just the portion of the route operated by the allegedly offending carrier. This decision is clear support for a test of circumstances and conditions that takes into consideration interchanges, circuity and wasteful back-hauls over the entire routes. Macon was the common point, it being alleged that the Southern Railway discriminated against the Georgia Railroad by accepting traffic from the Central of Georgia at that point on the basis of through route, joint rates while not so accepting the Georgia Railroad's traffic. The plaintiff contended, as does the Western Pacific in the instant case, "that to avoid discrimination Southern must perform the same service at the same rate for all cars delivered to Macon by any carirer" (p. 365).

The court in rejecting this argument did not confine its comparison of circumstances and conditions to the services performed by the allegedly discriminating carrier only, but looked at the entire route from Atlanta through the common point of Macon to the representative destination. This is emphasized by the court's conclusion that "Section 3(4) requires equality of treat-

[36] If this Court should find the Commission has applied an erroneous test, it should have the opportunity of considering the evidence in the light of the proper standard. *Schaffer Transp. Co.* v. *U. S.* 355 U.S. 83 (1957); *I. C. C.* v. *J-T Transport Co.*, 368 U.S. 81, 93 (1961); *American Trucking Assns.* v. *U. S.*, 364 U.S. 1, 15 (1960).

ment between connecting lines but equality of treatment involves comparable conditions and the route of the Georgia being closed does not compare with that of Southern or the Central of Georgia" (p. 365).

The *Routing, Coal* case, *supra*, in turn, relies on *Quanah, A. & P. Ry. Co.* v. *Atchison, T. & S. F. Ry. Co.*, 211 I.C.C. 389, 391 (1935), and *Denver & R. G. W. R. Co.* v. *Union Pac. R. Co.*, 287 I.C.C. 611, 658 (1953), as authority for the standard of comparison to be employed. In *Quanah*, the Commission rejected an argument that a carrier must treat all of its connections exactly alike under Section 3(3) of the Interstate Commerce Act [now §3(4)] asserting that equality of treatment must be determined by similarity of circumstances and conditions (211 I.C.C. 389, 391). Since the alleged discrimination was bottomed on joint rates providing for transportation service over the defendants' and other railroads at a lower level than was established in connection with the complainant, the Commission compared overall-service factors, not just the services performed by the defendants. This evaluation included a study of distances, transit time and number of interchanges through the Floydada gateway in connection with the complainant with the same transportation and service factors over existing, and allegedly preferred, through routes in connection with other railroads (211 I.C.C. 389, 391, 392). After further hearing the Commission held the defendants to be in violation of Section 3(3) [now §3(4)] on the basis of evidence of substantial similarity of transpor-

tation circumstances and conditions. *Quanah, A. & P. Ry. Co.* v. *Atchison, T. & S. F. Ry. Co.*, 226 I.C.C. 201 (1938).

In an apparent effort to minimize the test of similarity of circumstances and conditions the United States suggests that the choice between the Bieber route and the Southern Pacific route is a choice basically to be made by shippers, not by the Northern Pacific and Union Pacific (p. 31, fn. 18). This proposal ignores the basic duty of railroads to establish *reasonable* through routes and *just* and *reasonable* rates with other carriers under Section 1(4) of the Act. It ignores the duty of the Commission to promote adequate, economical and efficient service and to foster sound economic conditions as expressed in the National Transportation Policy. These overriding considerations should not be defeated by the desire of a shipper to use a slow or circuitous service for his own purposes.[37]

The suggestion of the United States that the shipping public be granted the routes and rates it chooses is best answered by referral to the Commission's conclusion, following an evaluation of shipper testimony, that establishment of the through routes and joint rates requested by the Western Pacific was not shown to be necessary or desirable in the public interest (R. 645).

[37] Carrier practices involving delayed handling or slow, back-haul services have been condemned as being wasteful, not in the public interest, and resulting in increased costs that must be absorbed by the general public. See *United States* v. *Union Pacific Railroad Company*, 173 F. Supp. 397, 410 (S.D. Iowa), aff'd *sub nom Union Pacific R. Co.* v. *United States*, 362 U.S. 327 (1960); *Routing Exceptions, A., T. & S. F. and Connecting Carriers*, 325 I.C.C. 228, 233, 235 (1965).

2. The Commission's Conclusion That Discrimination Does Not Exist Is Based on Adequate Findings and Is Overwhelmingly Supported by the Evidence.

The Commission's findings with respect to dissimilarity of circumstances and conditions are supported by substantial evidence and should not be set aside on review. See *United States* v. *Drum*, 368 U.S. 370, 386 (1962); *U. S.* v. *Carolina Carriers Corp.*, 315 U.S. 475, 483 (1942). It is particularly significant that Western Pacific, a complainant before the Commission seeking to set aside an established rate structure and obliged to prove that it is entitled to equal rate treatment by the Northern Pacific and Union Pacific, made no effort to submit a comprehensive comparison of transportation conditions over the allegedly preferred and allegedly prejudiced routes.

Of the five company witnesses called by Western Pacific, only its Superintendent of Transportation testified to transportation conditions and he limited his testimony to a generalized description of the Bieber route and the interchange at Portland. The northern terminus of the Western Pacific is at Bieber, 490 miles from Portland. The Great Northern performs all of the transportation between Bieber and Portland. Despite this fact, it did not submit any evidence at the Commission hearing.

The defendants Northern Pacific and Union Pacific and intervening defendant Southern Pacific presented

detailed evidence of distances, transit times, costs, operating circumstances and physical transportation characteristics in order to permit a comparison of circumstances and conditions over the allegedly preferred and allegedly prejudiced routes. The Commission's consideration of this issue was thorough; it devoted five pages of its report to a discussion of the evidence and a statement of its findings of fact (R. 635-640).

With regard to the operating routes north of Portland, the Commission found that, under the complaint, the Northern Pacific would be required to use a circuitous route to points east of the Cascade Mountains. For example, from San Francisco to Walla Walla, Washington, the present Southern Pacific - Northern Pacific route is 1,014 miles, while via the Bieber route to Portland then Northern Pacific, the distance would be 1,339 miles (R. 636).

The Western Pacific asserts that this finding is erroneous, contending that the evidence is directly to the contrary (p. 69, referring to R. 146, 147). In challenging the Commission's finding, the Western Pacific relies on the testimony of a shipper who was not qualified in this area and who did not refer to the routing obligations incumbent on the Northern Pacific. Moreover, under cross-examination the same witness acknowledged that he was not aware of the substantially greater circuity that would occur over the Northern Pacific route; he erroneously thought that the routings to be established would be identical with the routes that now exist via Portland (R. 146, 147).

Opposed to this vague understanding is the unequivocal testimony of Northern Pacific's General Freight Agent that shipments routed to an eastern Washington point such as Spokane via the Bieber route to Portland, thence Northern Pacific, would necessarily move over Northern Pacific's circuitous route through Auburn, Washington (R. 270). The finding based on this evidence is squarely within the Commission's particular realm of competence. The Commission is well aware that under Section 15(8) of the Act (49 U.S.C. §15(8)) a shipment routed Western Pacific - Great Northern - Portland - Northern Pacific would move over the Northern Pacific route.

If there is any doubt as to the correctness of the Commission's finding, it should be dispelled by the explicit testimony of appellants' own witness, Western Pacific's Superintendent of Transportation, who stated that a car routed via Bieber route to Portland and then Northern Pacific would be moved west from Wishram, Washington, to Vancouver, Washington, by the Great Northern then interchanged to the Northern Pacific at Portland and moved on to Spokane through Auburn. The Western Pacific witness testified that the circuity involved in this handling would be substantial (R. 73). In a footnote, Western Pacific implies that the shipments of cast-iron pipe prove that no circuity is involved; but the record is silent as to the routing and movement of this traffic (p. 69).

Circuity would be as great in connection with the Union Pacific, the Commission finding that to points

east of the Cascades the allegedly prejudiced route would require a westward-vs.-eastward backhaul along the Columbia River aggregating slightly more than 200 miles (R. 636). To points west of the Cascade Mountains, the Commission found that movement over the allegedly prejudiced route would require a costly and wasteful 20-mile round-trip movement between Portland and Vancouver in the case of both Northern Pacific and Union Pacific (R. 637).[38]

These findings are supported by testimony of the rail officials intimately acquainted with the operation (Ex. 27, R. 217, 218, 232, 235, 250, 278, 467). Once again, the Commission's finding is confirmed by the Western Pacific witness who testified that participation of Union Pacific in the Bieber route would result in an additional backhaul of some 200 miles (R. 70). The Western Pacific witness also acknowledged that cars routed via Northern Pacific or Union Pacific would be moved from Vancouver to Portland, a distance of 10 miles, and then handled 10 miles north, a circuity not present if moved by the Great Northern over the Bieber route as it now exists (R. 71, 72).

The portions of the allegedly preferred and allegedly prejudiced routes south of Portland were compared, and

[38] A glance at the map attached to this brief, Appendix B, reveals that all shipments routed over the Bieber route to be interchanged with the Northern Pacific or Union Pacific would move by the Great Northern to Wishrom, then west over the SP&S to Vancouver. After a transfer to Portland to effect interchange, the cars would move east in a backhaul movement to distinations such as Spokane, or in a return movement to Vancouver when routed to a destination such as Seattle.

on the basis of distance, interchanges and physical characteristics the Commission found that transportation conditions are more favorable over the Southern Pacific route than over the Bieber route between Portland and points in California. There was also evidence of cost factors sharply in favor of the Southern Pacific route between California and Portland (R. 638, 639).

Both Western Pacific and the United States seem to contend that the respective routes south of Portland are comparable, relying not on contemporaneous evidence but outdated Commission decisions involving irrelevant issues (App. brf., p. 65, fn. 56, and p. 67, fn. 59; U. S. brf., p. 31, fn. 18). Obviously, in the proceeding authorizing construction of the connecting link that joined the Western Pacific and the Great Northern to create the Bieber route, *Great Northern Ry. Co. Construction,* 166 I.C.C. 3 (1930), the Commission made no attempt to compare operating conditions over the not-yet constructed Bieber route with the Southern Pacific route to Portland. Likewise, the decision referred to by the United States (p. 31, fn. 18), *Pacific Coast Fourth Section Applications,* 190 I.C.C. 273 (1932), relates to issues under Section 4 of the Act which are entirely foreign to a Section 3(4) proceeding.

The Commission, in the present case, did not resort to stale findings of fact in cases involving completely different issues, but based its evaluation of the routes south of Portland on the detailed testimony and exhibits

of a Southern Pacific witness (Exs. 33-35, R. 307-328, 483-502). This evidence was unrebutted.

Most importantly with respect to the discrimination issue, the Commission compared overall distances and overall transit times between points in California and points in the Northwest over the respective routes and found the evidence significantly favors the Southern Pacific route (R. 636-640). The Commission's finding that the routes that would be created if Northern Pacific and Union Pacific became Bieber-route participants would be longer, more difficult to operate and more circuitous than the allegedly preferred Southern Pacific route (R. 641), is unassailable since it is based upon evidence presented by Western Pacific, as well as Northern Pacific and Union Pacific, witnesses (Ex. 9, R. 48, 359-402; R. 70-73, 217, 218; Ex. 32, R. 306, 473-482; R. 270-271, 307-328, Exs. 33-35, R. 328, 483-502).[39]

Western Pacific criticizes the Commission's finding that transit times are markedly superior over the Southern Pacific route than over the Bieber route, urging that the Commission erred in its reliance on present schedules (pp. 69, 70). The objection that the performance

[39] The existence of Union Pacific's direct route between the Northwest and southern California is irrelevant to the Section 3(4) issue; Western Pacific is not challenging the rates in effect over this route as being discriminatory and it is neither a preferred nor a prejudiced route. Rates over Union Pacific's direct route equal to those over the Southern Pacific route are primarily limited to traffic between Idaho and eastern Washington and Oregon and southern California points served by Union Pacific, and do not include all commodities (R. 215).

finding was based on present schedules is invalid. As Western Pacific points out, the only volume of traffic to Northern Pacific and Union Pacific points is moving via Southern Pacific (pp. 69, 70). There was no evidence relating to the actual transit time incurred by the cast-iron pipe movement or the few other shipments transported to or from Northern Pacific and Union Pacific points via the Bieber route.[40]

Witnesses for Northern Pacific and Union Pacific did testify with respect to transit time and submitted exhibits showing the published freight-train schedules that would govern the transportation of freight between California and the Northwest when participated in by Northern Pacific and Union Pacific with the Great Northern - Western Pacific, on the one hand, and Southern Pacific on the other (Ex. 28, 29, R. 256-260, 265, 276, 468-470). This evidence is the basis of the Commission's findings that transit is significantly faster over the allegedly preferred Southern Pacific route than over the allegedly prejudiced Bieber route to or from Northern Pacific and Union Pacific points. The Western Pacific can hardly object to the use of current schedules as its own witness submitted train schedules between California and the Northwest

[40] Western Pacific seems to suggest that there has been no criticism of the cast-iron pipe movement. A Union Pacific witness testified that because of the backhauling involved and because Union Pacific received the cars from the Great Northern at Portland instead of Bend where Great Northern first connects with Union Pacific on the Bieber route, the arrangement for transporting cast-iron pipe is not entirely satisfactory to Union Pacific (R. 216).

for all the railroads involved (R. 66, 71, Ex. 23, 24, R. 78, 463, 464).

Western Pacific acknowledged the importance of transit time in arguing to the District Court that the test of similarity of circumstances and conditions must be based on performance (R. 685). A meaningful performance test must compare the transportation service presently provided over the Southern Pacific route to or from points on the Northern Pacific and Union Pacific in the Northwest with the performance and service that would be available if Northern Pacific and Union Pacific participated in the Bieber route. The latter circumstance must always take into consideration the interchange between Northern Pacific or Union Pacific and Great Northern at Portland with the attendant circuity and added operational difficulties.

The fallacy of Western Pacific's argument is that when speaking of performance it refers to the present Bieber route to Great Northern points in the Northwest. Admittedly, this service is good as the Great Northern route is direct and does not require an interchange at Portland. Shippers who indicated they preferred the Bieber route were speaking of the present Bieber route directly to or from Great Northern points in the Northwest. These witnesses had not used the Bieber route to or from Northern Pacific or Union Pacific points and, of course, had no idea what the quality of service would be if Northern Pacific and Union Pacific were required

to interchange shipments with the Great Northern at Portland.[41]

In this connection, counsel for the Western Pacific argued before the District Court that shippers who had a choice of routes preferred the Bieber route, referring to a study of shipments originating on the Santa Fe and destined to points in the Northwest (R. 686).[42] This evidence is worthless as a performance test, first, because it matches the present Bieber route with the present Southern Pacific route, but does not provide any comparison with the allegedly prejudiced route. Second, it is understandable that most shippers located on the Santa Fe would route over that line to Stockton and then over the Bieber route rather than over the Santa Fe's competitor, the Southern Pacific. Any other result would be surprising in view of the testimony of the Western Pacific traffic witness who described the close cooperation of the Santa Fe, Western Pacific and Great Northern in traffic solicitation, freight-train schedules and joint rates (R. 33).

Western Pacific also argues that the Commission erred in considering the Bieber route a multiline route with excessive interchanges and circuity when compared to the Southern Pacific route (pp. 65, 66). In this objection to the Commission's factual determina-

[41] Several shipper witnesses acknowledged they did not know what service could be provided if Northern Pacific and Union Pacific were to participate in the Bieber route (R. 122, 135, 137).

[42] The witness introducing this study admitted that it included traffic to and from points beyond the scope of the complaint (R. 207).

tion the Western Pacific is on thin ground, indeed, since it has repeatedly stressed the Bieber-route partnership, a combination requiring interchanges between railroads at Stockton and Bieber with a third interchange taking place at Portland if Northern Pacific and Union Pacific are to be drawn into the Bieber route. In every comparable movement, the Bieber route involves greater multiline handling, with attendant operational complications, than does the Southern Pacific route as reference to the map attached as Appendix B reveals.

The interchange or transfer of cars at Portland is an integral element of the transportation service under study, and the Commission made detailed findings of the greater distance, time and cost involved when cars are transferred at Portland between Great Northern and Union Pacific when handled over the Bieber route than when the transfer takes place between Southern Pacific and Union Pacific (R. 637-638).

By means of testimony and a map exhibit, a Union Pacific witness demonstrated that a transfer of cars between Great Northern and Union Pacific at Portland would move through three terminals and over two river bridges, three times the distance required for a Southern Pacific - Union Pacific transfer; that the time required for the Great Northern interchange is four times that required with Southern Pacific, and that the cost is almost eight times greater (R. 231-233, Ex. 27, R. 250, 467). This evidence was confirmed in large degree by Western Pacific's operating witness who conceded that cars interchanged by Union Pacific with

Great Northern would go through three terminal yards, while no intermediate yard handling was required for an interchange with the Southern Pacific (R. 70).

Western Pacific also argues that the differences in interchange arrangements are within the operating control of the carriers and should be worked out by the parties (pp. 70, 71). This ignores the fact that Great Northern cars terminate their road haul at Vancouver, Washington, and must be interchanged through three yards and over the Columbia and Willamette Rivers to the Union Pacific's Albina Yard in Portland. This is a physical circumstance that simply cannot be changed.[43] The cases cited by Western Pacific are inapposite, involving disputes between carriers over the location of points of interchange (p. 71, fn. 62).[44] Union Pacific and Great Northern have no disagreement over the manner in which cars are interchanged; the operation is as efficient as physical circumstances permit. It is interesting to note that it is the Western Pacific, terminating 490 miles from Portland, which insists operating difficulties at the Portland transfer can easily be solved. Great Northern, the carrier directly involved,

[43] The map of Portland-Vancouver (Ex. 27, R. 250, 467) graphically illustrates the complexity of the Union Pacific-Great Northern interchange.

[44] *Atlantic Coast Line R. Co.* v. *Southern Ry. Co.*, 321 I.C.C. 283, 290 (1963), can be further distinguished in that the seven-mile transfer was from one yard of the defendant to another yard of the defendant and thus wholly within defendant's control. On the other hand, traffic interchanged between the Union Pacific and Great Northern is effected through the successive handling by SP&S engines and crews and Northern Pacific Terminal Company engines and crews, a circumstance not present in the interchange with Southern Pacific (R. 228).

did not introduce any evidence and did not dispute the evidence introduced by the Union Pacific.

The Commission also noted that if Northern Pacific and Union Pacific were required to participate in joint rates with Western Pacific and Great Northern over the Bieber route, they would be forced to exchange traffic with the Great Northern at Portland, even though both carriers also serve Bend, Oregon, a point of connection with the Great Northern, some 246 miles south of Portland (R. 640). The Northern Pacific and Union Pacific would thus be short-hauling themselves by delivering traffic to the Great Northern at Portland—a carrier competing directly with appellees at many points in the Northwest—even though both Northern Pacific and Union Pacific are capable of providing service over the Bieber route as far as Bend.

The injustice of such a result was recognized by the Commission with the observation that the Northern Pacific has refrained from establishing joint rates through Bieber with Great Northern, its strongest competitor, and it is fearful that the establishment of such rates would enable the Great Northern to solicit its traffic (R. 627).

Traffic officials of Northern Pacific and Union Pacific testified that while their lines compete with Great Northern in the northwestern states, there is no competition with the Southern Pacific. The establishment of through routes and joint rates with the Southern Pacific at Portland is logical and represents a sound

business practice, while a similar arrangement with Great Northern would not (R. 214, 273, 274).

The evidence demonstrates that if the Northern Pacific and Union Pacific were to participate in joint rates via Portland and the Bieber route, they would suffer competitively from the resulting inefficient and uneconomic transportation. In every instance, shipments routed over the proposed route from Northern Pacific or Union Pacific points to Portland, then over the Great Northern via Bieber, would incur a substantially greater elapsed transit time than if moved from the same point over the present Southern Pacific route. Forced participation in this slow, inefficient service would have an immediate impact on the Northern Pacific and Union Pacific. A carrier cannot successfully meet competition from other railroads or motor carriers by providing an inferior service. Therefore, the refusal of Northern Pacific and Union Pacific to participate in such wasteful transportation is founded on sound economic and commercial considerations.

The United States suggests that certain operating conditions on the Bieber route would justify the action of Northern Pacific and Union Pacific in declining to join the Western Pacific in joint rates, indicating, as examples, the feasibility of the connection and the ability to gain a fair return on the traffic (p. 30, fn. 18). While the United States would not consider the length or difficulty of the Bieber route sufficient justification for a refusal to participate in joint rates, this observation may relate only to the present Bieber route,

or at least the portion of the Bieber route south of Portland.

One significant example of a justification for the existing rate arrangements is found in the suggestion of the United States that Northern Pacific and Union Pacific would not be guilty of discrimination if their participation in joint rates via the Bieber route would compel them to offer substandard transportation which might potentially destroy their good will. This is precisely what would happen if Western Pacific's complaint were granted and that is exactly why Northern Pacific and Union Pacific have refrained from participating in joint rates with Great Northern and Western Pacific over the Bieber route.

Northern Pacific's traffic witness pointed out that Great Northern's participation in the Bieber route would immediately provide Great Northern with traffic information that it could use for competitive advantage (R. 273, 274). This witness explained that traffic routed over the Bieber route and interchanged with the Northern Pacific at Portland would incur slow, circuitous routing that would result in shipper dissatisfaction, prompting the shipper to retaliate and take business away from the Northern Pacific (R. 296). The Northern Pacific witness discussed the competitive disadvantage that would result in the following manner:

> "A. Well, the shipper will make the decision, certainly, but let us just take a man that, at Spokane for example, assume he gets a car of oranges,

routes it out via the Bieber route. He has both of them going to Spokane. One of them would travel east of Wishram up to Spokane, over the Great Northern route, the short route; the other car around through Portland.

"If he was in a hurry for the car that was going via our route, it would just be too bad. He would be displeased with our service, and the chances are he would say, 'Well, don't give the Northern Pacific any more business.'

"The Great Northern route is so superior they might take other business away from us.

"When the shipper gets mad he is liable to do anything, and one thing that will make him awful mad is poor service." (R. 299, 300)

Similarly a witness for the Union Pacific also explained that interchange is conducted with Southern Pacific and not with Great Northern at Portland for competitive reasons (R. 214).

In support of its contention that circumstances and conditions are similar, Western Pacific asserts that the Bieber route has competed successfully with the Southern Pacific route wherever rates have been equalized (pp. 64, 65). There is no doubt that the Bieber route competes vigorously with the Southern Pacific route between points in California and points in the Northwest. These parallel competing routes do not stop at Portland but continue into the Northwest, the Southern Pacific by extension to points on the Northern Pacific and Union Pacific and the Bieber by extension to points on the Great Northern. Both routes serve most

major points in the Northwest and provide vigorous competition.[45]

This competition between California and all major points in the Northwest was emphasized by Western Pacific's principal traffic witness who stated that Santa Fe - Great Northern - Western Pacific work as partners in the solicitation of traffic via Bieber to points on the Great Northern. The sales activities are coordinated and the railroads have close working arrangements. The Western Pacific witness also stated that Santa Fe and Western Pacific freight-train schedules are keyed to produce the best possible service to the Northwest, but that Santa Fe does not have working schedules with the Southern Pacific on California-Northwest traffic. The witness also acknowledged that the Santa Fe has more rates via Bieber to the Northwest than it has with Southern Pacific (R. 33).

This evidence explains why the Bieber route competes so effectively with the Southern Pacific route to all major points in the Northwest, and it points up an aspect of this case conveniently ignored by the Western Pacific and overlooked by the United States. There is presently vigorous two-route competition because Santa Fe - Western Pacific - Great Northern work as partners in the solicitation of freight and establishment of schedules against the route of South-

[45] Table 12, Ex. 3, R. 21, 338, lists a few relatively smaller stations in the Northwest served by Northern Pacific or Union Pacific and not by the Great Northern. It should be noted that some of these stations are served by the Milwaukee Railroad which does participate with the Western Pacific via the Bieber route.

ern Pacific - Northern Pacific or Union Pacific. This is healthy competition and it has served the needs of the shipping public.[46]

The Commission made no specific finding with respect to competition, but its finding that additional routes and rates are not necessary or desirable in the public interest is recognition of the sufficiency of the present competitive routes. This finding flatly contradicts the conclusion of the United States that the existing rate arrangement inhibits competition—an erroneous inference drawn from a misreading of the record. If a full line of joint rates were established over the Bieber route by the Northern Pacific and the Union Pacific, competition would be diffused. Great Northern, for example, would not solicit traffic over the Bieber route for the purpose of turning it over to the Northern Pacific or Union Pacific at Portland, nor would there be any incentive for the Great Northern to improve freight-train schedules in conjunction with the Northern Pacific and Union Pacific. Naturally, it would prefer its maximum haul to Bieber. This, perhaps, explains why the Great Northern has been a passive participant in this case, rather than an active complainant. It is significant that both Santa Fe and Great Northern have not introduced any evidence in

[46] Many shippers who testified acknowledged the existence of this competition and the fact that they had two routes available (R. 108, 121, 125, 126, 128, 134, 137, 142, 151, 156, 157, 164). With respect to the Section 1(4) issue, the Commission held that the public interest did not require the additional routes and rates sought by the Western Pacific (R. 645).

this proceeding and have not asserted that competition would be enhanced in any way if Western Pacific's complaint is satisfied.

If Northern Pacific and Union Pacific were forced to participate in joint rates with the Bieber route, they would have little incentive for solicitation over that route, only to see the Great Northern handle the traffic along a line paralleling the Northern Pacific and Union Pacific lines between Portland and Bend, Oregon. It would be manifestly impossible for Northern Pacific and Union Pacific to compete with Great Northern from or to points east of the Cascades via the Bieber route, as the Great Northern would shunt its traffic directly south from Wishram while Northern Pacific and Union Pacific would be forced to continue the roundabout movement through Portland.

3. The Commission's Conclusion That No Discrimination Exists Is a Question Confided to the Judgment of the Commission and Should Be Affirmed.

The United States asserts that the Commission did not treat in detail the question of discrimination and the attendant issue of "similarity of circumstances and conditions" (p. 13, fn. 8). To the contrary, the Commission entered specific findings of fact relating to this issue, evaluated the evidence, made appropriate subsidiary findings and from this, reached its ultimate conclusion. Nothing more is required by the Admin-

istrative Procedure Act (5 U.S.C. §§1101-11) or the holdings of this Court.

The Commission compared the allegedly preferred route—Northern Pacific and Union Pacific in conjunction with Southern Pacific—with the allegedly prejudiced route—Northern Pacific or Union Pacific in conjunction with Great Northern, Western Pacific and Santa Fe—the Commission evaluated the evidence relating to all segments of these routes and entered five pages of specific findings of fact (R. 635-640). Next, observing that equality of treatment is determined by similarity of circumstances and conditions, the Commission entered its subsidiary finding on the similarity question by stating:

> "The routes sought through Bieber and Portland are longer and involve more difficult operating conditions than the Southern Pacific route, and they require hauls in a general direction opposite to the direct movement." (R. 641)

After having concluded that Western Pacific was not a "connecting line" of Northern Pacific and Union Pacific within the meaning of Section 3(4), the Commission returned to the remaining principal issue and reached the conclusion that—

> "Even if the complainants were connecting carriers, the evidence of record does not establish the similarity of circumstances and conditions which justifies equality of treatment." (R. 643)

The issue of discrimination was disposed of by the ultimate conclusion—one flowing logically from the findings of fact and subsidiary finding—that the failure and refusal of Northern Pacific and Union Pacific to establish through routes and joint rates with the Western Pacific through Bieber and Portland does not result in discrimination in violation of Section 3(4) of the Act (R. 645).

This orderly and thorough treatment of the discrimination issue is strikingly similar to the Commission's decision under review in *Minneapolis & St. Louis R. Co.* v. *U. S.*, 361 U.S. 173 (1959). The Court observed that the Commission devoted five pages to the issue of competition and while it did not make express findings on all matters discussed, its subsidiary findings fully supported its conclusion. With respect to the requirements of the Administrative Procedure Act, this Court said:

> "By the express terms of § 8(b), the Commission is not required to make subordinate findings on every collateral contention advanced, but only upon those issues of fact, law, or discretion which are 'material.' From a thorough examination of the record, we are persuaded that the Commission has made adequate subsidiary findings upon all material issues and has made the ultimate findings required by § 5(2), that they support the Commission's order, and are, in turn, supported by substantial evidence." (pp. 193-194)

Finally, this Court has held that when the Commission has found that the circumstances and conditions were similar, the Court cannot substitute its judgment for that of the Commission. See *Chicago, I. & L. Ry.* v. *United States*, 270 U.S. 287, 294 (1926). Or, as expressed in *United States* v. *Trucking Co.*, 310 U.S. 344, 352 (1940)—

> "The Interstate Commerce Act does not attempt to define an unlawful discrimination with mathematical precision. Instead, different treatment for similar transportation services is made an unlawful discrimination when 'undue,' 'unjust,' 'unfair,' and 'unreasonable.' And the courts have always recognized that Congress intended to commit to the Commission the determination, by application of an informed judgment to existing facts, of the existence of forbidden preferences, advantages and discrimination."

See also *Manufacturers Ry. Co.* v. *United States*, 246 U.S. 457, 481 (1918), and *Nashville Ry.* v. *Tennessee*, 262 U.S. 318, 322 (1923). Thus, even if the Court were disposed to reach a contrary conclusion if it tried the matter *de novo*, it may not, on this basis, set aside the Commission's finding.

As we have demonstrated, the Western Pacific is not a connecting line of the Northern Pacific or Union Pacific and therefore the decision of the District Court should be affirmed. However, if this Court reaches the Commission's further finding, that the evidence of rec-

ord does not establish the necessary similarity of circumstances and conditions which would justify equality of treatment to Portland, we suggest that the case be remanded to the District Court for initial consideration of this issue. Finally, if this Court believes that remand is not warranted, we submit the case should also be affirmed on the latter basis because the Commission has applied the correct standard, its findings are adequate to support its ultimate conclusion, and its subsidiary findings are based on substantial evidence of record.

CONCLUSION

The Commission's finding that additional routes and rates are not required, in the public interest, between points in California and points in the Northwest pursuant to Section 1(4) and Section 15(3) of the Act has not been challenged by the Western Pacific either in the District Court or in this Court. Nevertheless, appellants contend that the refusal of the Northern Pacific and the Union Pacific to establish such additional routes and rates constitutes a violation of Section 3(4) of the Act.

The Commission properly found that the Western Pacific failed to bring itself within the purview of Section 3(4) as a connecting line of the Northern Pacific and the Union Pacific at Portland, which finding was affirmed by the District Court. Moreover, the Commission's further finding that the appellants failed to establish the necessary similarity of circumstances and conditions as between the allegedly prejudiced line and

the allegedly preferred line which would justify equality of treatment at Portland is based upon the proper legal standard, is supported by adequate subsidiary findings which are, in turn, sustained by substantial evidence of record.

For the reasons stated, the judgment below should be affirmed.

Respectfully submitted,

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September 23, 1965

PROOF OF SERVICE

I, Frank S. Farrell, Attorney for these Appellees and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 23rd day of September, 1965, I served copies of the foregoing Brief for Appellees Northern Pacific Railway Company, Union Pacific Railroad Company, and Southern Pacific Company on the several parties as follows:

1. On the United States by mailing a copy, properly addressed, with air mail postage prepaid to each of the following: Thurgood Marshall, Esq., The Solicitor General; Donald F. Turner, Jr., Esq., Assistant Attorney General; Arthur J. Murphy, Jr., Esq., Attorney, Department of Justice, Washington 25, D. C., and Cecil F. Poole, Esq., United States Attorney, San Francisco, California.

2. On the Interstate Commerce Commission by mailing a copy, properly addressed, with air mail postage prepaid to each of the following: Robert W. Ginnane, Esq., General Counsel, and Robert S. Burk, Esq., Attorney, Interstate Commerce Commission, Washington 25, D. C.

3. On The Western Pacific Railroad Company, Sacramento Northern Railway Company and Tidewater Southern Railway Company, Appellants, by mailing a copy, properly addressed, with air mail postage prepaid to each of the following: E. L. Van Dellen, Esq., and Walter G. Treanor, Esq., 526 Mission Street, San Francisco 5, California, and E. Barrett Prettyman, Jr., Esq., 800 Colorado Building, Washington 5, D. C.

FRANK S. FARRELL

APPENDIX A

Statutes Involved Before the Commission

The duty of carriers to establish through routes and just and reasonable rates applicable thereto is imposed by Section 1(4) of the Interstate Commerce Act (49 U.S.C. §1(4)) which provides:

> "(4) It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this chapter to establish reasonable through routes with common carriers by water subject to chapter 12 of this title, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers."

The Commission's jurisdiction to prescribe through routes and joints rates, subject to certain safeguards, is set forth in Sections 15(3) and 15(4) of the Interstate

Commerce Act (49 U.S.C. §§15(3) and 15(4)) which provide:

"(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this chapter, or by carriers by railroad subject to this chapter and common carriers by water subject to chapter 12 of this title, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section.

"(4) In establishing any such through route the Commission shall not (except as provided in section 3 of this title, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: *Provided, however,* That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b) of this paragraph, give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without

notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 12

THE WESTERN PACIFIC RAILROAD, ET AL., *Appellants*,

v.

UNITED STATES OF AMERICA, ET AL., *Appellees*.

REPLY BRIEF FOR APPELLANTS

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THE WESTERN PACIFIC RAILROAD, ET AL., *Appellants*,

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REPLY BRIEF FOR APPELLANTS

The Brief for Appellants and the Brief for the United States have already answered most of the contentions made by appellees,[1] and therefore this Reply Brief will discuss only a few of appellees' major errors and the significance of their position.

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[1] For purposes of simplification, the term "appellees" will be used here to refer to both the railroad appellees and the ICC, unless otherwise indicated. The brief for the railroad appellees will be cited "RR App.—," and the brief for the ICC will be cited "ICC —."

The Court should note carefully the development of appellees' argument. They begin by asserting that § 3(4) was really intended by Congress to apply only to those lines which have a *direct physical connection* with the discriminating carrier. The railroad appellees say, for example, that § 3(4)'s predecessor, § 3(2), insured "that those lines which had a direct physical connection received the same treatment * * *" (RR App. 17-18); that § 3(2) "was intended for application to lines which have a direct physical connection" (RR App. 18); and that "an imposing number of state cases can be cited to support the proposition that the adjective 'connecting' requires a direct physical connection"[2] (RR App. 19). Similarly, the ICC argues that the requirement of reasonable interchange facilities in § 3(2) "obviously relates to interchanging traffic with physically connecting lines" (ICC 22); that "the framers of the statutory language [in § 3(4)] had actual physical connection between complainant and defendant in mind" (ICC 9); that the framers of § 3(4) "had in mind a direct physical connection" (ICC 12); and that "the only specific explanation of Section 3(4)'s prohibition of rate discrimination is

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[2] The railroad appellees' "imposing number of state cases" turn out to be of no help whatever. These cases either say that a line which physically connects is indeed a "connecting line"—a proposition that no one disputes—or they support our position that "connecting line" goes beyond physical connections. For example, Article 4536 of the Texas Revised Statutes, which the court was interpreting in *Texas & N. O. R. R.* v. *Gulf & I. Ry.*, 54 S.W. 1031 (Tex. Civ. App. 1899), read: "Whenever any two or more railroads doing business in this state shall connect with each other by crossing each other's tracks or otherwise so as to form a continuous or connected line from one point in this state to another point in this state, such lines so crossing are hereby declared to be connecting lines * * *."

that it is based upon the principle of the Pacific Railroad Acts which applied to railroads which were intended to, and did in fact, connect physically" (ICC 23).

We have shown, of course, that this interpretation requiring a direct physical connection is totally erroneous—that cases prior to the Act did not require it, that this Court has never required it, and that the ICC itself has never required it (see Brief for Appellants 28-29, 37, 43-54).

But even more importantly, the appellees proceed in their briefs in this very case to concede that a direct physical connection is *not* necessary—despite what they say the Act originally meant.[3] They agree, as the ICC put it, that the connection can be "physical or business" (ICC 13-14), or, as the railroad appellees put it, that there can be "either a direct physical connection or a business connection" (RR App. 39).

Several points should be noted. First, the only difference between appellants and appellees in regard to § 3(4) turns out to be whether the discriminating carrier is going to be responsible for establishing the "business connection," or whether this connection is going to be established by the facts of competition. Thus, the appellees would say that a carrier can grant favorable rates to one line and not to a competing line *unless* (a) the competing line happens to be physically connected to the discriminating carrier, or (b) the discriminating carrier itself has chosen in the past to

[3] The ICC concedes, for example, that both *Atlantic Coast Line* and *Chicago, I. & L. R.R.* held that a direct physical connection is not necessary (ICC 33, 36). The railroad appellees agree that *Atlantic Coast Line* so held but argue that *Chicago, I. & L. R.R.* is irrelevant (RR App. 24, 28-30).

grant the same favorable rates to the competing line or has otherwise chosen to open "through routes" with it. If either of these alternatives has occurred, appellees would concede that the disfavored line is a "connecting line" with the discriminating carrier. But absent the circumstance of physical connection, appellees would leave to the discriminating carrier the decision as to whether another line connects with it within the meaning of § 3(4).

We say that this was not the intent of Congress and is not the lesson of prior case law. We say that discrimination is to be determined by the facts of competitive life and that once it is established, it must be erased, no matter what form it takes. We say that Congress never intended to leave to the discriminating carrier the decision as to whether its own discrimination is legal or illegal—that is, whether within the Act or not. To put it in terms of this very case, if Southern Pacific and Western Pacific really do compete; if Western Pacific is part of a route that was constructed and maintained for the very purpose of competing with the Southern Pacific route; if appellees grant favored rates at a common interchange to the Southern Pacific and not to the competing route of which Western Pacific is an integral part; if Western Pacific is harmed by this discriminatory treatment —then we say that Western Pacific is a connecting line and that the discriminatory treatment is outlawed, assuming the existence of substantially similar circumstances between the two competing routes. And it should be noted here that appellees do *not* dispute any of these underlying facts. They do not in any way dispute the existing competition. The railroad appellees, in fact, refer to "the vigorous rail competition

which presently exists in this area between the Bieber route partners, on the one hand, and the Southern Pacific route partners on the other" (RR App. 9). None of the appellees questions the original purpose behind the construction of the Bieber route.[4] They do not dispute the fact that the joint rates granted to Southern Pacific are not granted to the Bieber route. And it should be emphasized that they do not dispute anywhere in their briefs the extent of the injury to Western Pacific. Therefore, the only real quarrel between the parties is as to the law—whether our definition or theirs comports with the Act.

The second point to be noted is this: as soon as appellees agree that a physical connection is not necessary, they are in no position to argue that appellants have evolved a "unique" definition of § 3(4) that would make every railroad in the country the connecting line of every other. For the fact is that every railroad is no more the connecting line of every other under appellants' definition than it would be under appellees'. To use the ICC's own illustration (ICC 14), if a western railroad chose to enter into a full set of joint rates with lines reaching all the way to the New Haven in New York City, the western railroad would be a connecting line of the New Haven under appellees' own definition of § 3(4). As the railroad appellees themselves put it, the ICC and District Court construction of § 3(4) (and their own) would include "any line *regardless of where situated* if it participates in through routes with the appellees"

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[4] The ICC, for example, says that "admittedly, a purpose of the Commission [in sanctioning the construction which created the Bieber route] was to authorize competitive rail service from California to the north" (ICC 38).

(RR App. 39; emphasis added). Thus, even under appellees' construction of § 3(4), every railroad in the country *could be* the connecting line of every other.

But in truth, this entire argument about all-embracive, unlimited connecting-line status has little to do with reality. It stands on one of those hypotheticals commonly used to make the Court fear the outcome of its decisions. In truth, the recognition of connecting-line status is only the first step in any determination of whether favored rates must be eliminated. Even if lines are connecting, there must be substantial equality of circumstances and conditions before lines must be granted the same treatment. Or to put it another way, rates can be different if conditions and circumstances (such as unduly circuitous routes) legitimately account for the rate differential. Of course, we agree with the United States that in this case, the facts of competition virtually speak for themselves, that the two competing routes are obviously similar, and that the shippers who seek to use either or both routes should have that opportunity. But the fact remains that the requirement of similarity of circumstances provides a wholly adequate safeguard against any such possibility as that posed by appellees, where rates are equalized willy-nilly across the country.

Let us be precise about what we are seeking. It is not any new, unique or impractical interpretation. It is, instead, an interpretation completely in accord with the Congressional purpose and *stare decisis*. When a carrier is granting favored rates to one or more lines making up one route and refusing to grant such rates at a common interchange to one or more lines making up a second, competing route, we contend that two questions must be answered.

First, since § 3(4) prohibits rate discrimination between "connecting lines," is the complaining line a connecting line of the discriminating carrier? It is such a line, we say, if it is an integral part of an identified route which competes with and generally parallels the favored route and which meets the discriminating carrier at a common interchange with the favored route. Western Pacific is an integral part of a route which not only competes with and generally parallels the favored Southern Pacific route but was built and maintained for that very purpose. And the Bieber route joins the appellees at the common interchange point of Portland.

If—and only if—the complaining line is found to be a connecting line, then an entirely different and separate question arises: Are the favored and disfavored lines sufficiently similar so that equal treatment is required, or are their dissimilarities so great as to legitimately account for the rate differential? Here again, we submit that the Bieber-route-Southern-Pacific-route situation is so unique that the question is virtually answered without further proof, for the entire history of these routes, and the shipper testimony in this record, clearly establish that discriminatory rates are the only obstacle to full competition on an equal basis. But if further proof is needed, it is provided in the analysis of similar circumstances and conditions on pages 64-73 of our main brief.

In summary, there is the right to complain and the right to prevail. The right to complain depends on connecting-line status. The right to prevail depends upon similarity of circumstances. If these two rights are properly invoked, there is no danger whatever of any mass application by carriers for equal treatment.

What routes traverse this country and meet these tests? What regional routes? And if there are such routes, what conceivable harm is there in eliminating the excess rates which discriminate between them? Is that not what Congress had in mind in enacting § 3(4)?

Appellees have failed to offer answers to any of these questions.

Throughout their briefs, for example, appellees again and again treat this case as if it were one in which appellants are seeking *to establish new routes.*[5] Most of their argument and citations are grounded on this proposition. But appellants are not seeking new routes. That part of the complaint which sought the establishment of new routes under § 1(4) of the Act is no longer part of the case—not because of any concession or weakness, but because § 3(4) is the direct and complete answer to the discrimination being prac-

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[5] The ICC, for example, says that Western Pacific sought to have the ICC "order the opening of a new through route" (ICC 5), refers again to this "new through route" (*ibid.*), and quotes extensively from a case that did not even mention § 3(4) or discrimination but instead dealt entirely with the establishment of new routes (ICC 12-13). The railroad appellees refer to "the sought through routes" (RR App. 6) and assert that "Railroads are not required to establish routes and rates via all possible gateways and junctions" (citing a case that did not even mention § 3(4)) (RR App. 8); that Western Pacific seeks "the establishment of such additional routes" (RR App. 9); that "the duty of a carrier to establish reasonable through routes does not require it to establish routes and rates via all possible gateways and junctions" (RR App. 12); that our definition would allow any railroad to invoke § 3(4) "regardless of the need for the establishment of additional routes" under §§ 1(4) and 15(3) (RR App. 37), and that Western Pacific did not previously contend that appellees "would be required to establish through routes and joint rates with it via Bieber and Portland" (RR App. 42).

ticed.[6] Appellees, by pretending that new through routes are being sought, have chosen to ignore that part of the complaint which prayed that they be ordered to "cease and desist" from violating both § 3(4) and the National Transportation Policy, and that they put in force "nondiscriminatory" rates (R. 7-8).

We repeat, we are not seeking new routes in this case. The Bieber route is presently in existence and has been for over 30 years. It is a viable route that is attempting to compete on an equal basis with the generally-paralleling Southern Pacific route. What we seek is not a new route but the cessation of discriminatory rates. As we pointed out in our main brief (pp. 57-58), this can be accomplished by the railroad appellees in any one of a number of ways. As we also pointed out (*ibid.*), the argument that putting a stop to discrimination would force the establishment of new through routes has been made time and again to this Court and has repeatedly been rejected. The appellees, having chosen to grant favored rate treatment to Southern Pacific, must now eliminate their discrimination and restore the competitive balance. Whether the public interest requires the establishment of "new through routes" under other sections of the Act is wholly beside the point.

The railroad appellees allege a "conflict" between Western Pacific and the United States in regard to our definitions of connecting-line status (RR App. 14-15; see also RR App. at 32, 36, 37, 39). The ICC

[6] The Examiner correctly recognized that the entire thrust of appellants' case was under § 3(4) and that it was not necessary to reach the allegations under the other sections of the Act (R. 654).

makes no such contention and in fact assumes that Western Pacific and the United States seek the same definition (ICC 8). There is no conflict. Western Pacific has argued that "there need be only a series of connecting carriers *capable* of, and *available* for, handling through service but prevented from doing so by the discriminatory rates" (p. 48). The United States has pointed out that Western Pacific is "capable of offering through transportation with defendants but for their rate discrimination favoring the competing Southern Pacific" (p. 15) and has argued that any carrier is a connecting line "if it is part of a route which connects with the defendant and which is ready to offer through transportation in combination with the defendant" (p. 29). Both Western Pacific and the United States obviously interpret § 3(4) in precisely the same way.

The railroad appellees also contend that Western Pacific has undergone a "change of position" between the proceedings below and the proceedings in this Court (RR App. 36). Again, the ICC makes no such contention and in fact recognizes that Western Pacific's position now is the same as it was in the court below (ICC 10-11). We relied, for example, on *Atlantic Coast Line* below (R. 506), just as we do here. The sentence quoted by the railroad appellees in footnote 31 of their brief is taken completely out of context, for the subject being discussed there was the nature of the Bieber route as a single unit, and the quoted sentence was immediately followed by this stricture: "What we are saying is that the Bieber Route was established as a competing line of railroad, and it was so constructed and has been so operated as a single line of railroad" (R. 682). The Bieber route

as a unit would include, not exclude, the Santa Fe, contrary to the assertion of the ICC at page 14 (including footnote 2) of its brief.

Perhaps the most interesting parts of appellees' briefs are those which deal with *Chicago, I. & L. R.R.* v. *United States,* 270 U.S. 287 (1926).

The railroad appellees give two grounds for distinguishing that case. First, they say it arose under the 1920 Act which, unlike the present Act, contained certain language which they then proceed to quote. The quoted language makes no mention of connecting lines. Unfortunately, however, they neglect to quote the remainder of the relevant provision, which reads: "* * * and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines * * *" (41 Stat. 479). Secondly, they say that *Chicago, I. & L. R.R.* is a "switching case" and not a rate case. Again unfortunately for their position, the ICC used *rate* cases in its argument to this Court in *Chicago, I. & L. R.R.* to support the very argument that the Court then adopted in its opinion.[7] And the Court's opinion was not restricted to switching facilities but was rendered in the broadest possible language applicable to discrimination in all its forms.

Even more interesting, however, is the attempt by the ICC to distinguish *Chicago, I. & L. R.R.* It will be recalled that the discrimination in that case was practiced against a line that had no physical connec-

[7] Brief for Interstate Commerce Commission, *Chicago, I. & L. R.R.* v. *United States,* No. 150, October Term 1925, pp. 27, 29.

tion with the discriminating carriers, but each of the discriminating carriers had entered into switching arrangements with each other at their common interchange points. The ICC comes to the conclusion that the holding of the case is as follows: "the [discriminating] carriers having waived any requirement of physical connection for connecting line status as to some cannot refuse to do so for all" (ICC 37). That conclusion simply makes no sense. The discriminating carriers had no physical connection to waive in relation to each other. Moreover, even if they had, waiver simply was not the basis of the Court's decision.

The ICC also distinguishes *Chicago, I. & L. R.R.* on the ground that it is a switching case rather than a rate case, just as the railroad appellees do. Yet the ICC argues in the same brief (ICC 11) that § 3(4) cannot be interpreted our way because of that part of § 3(4) which provides for adequate interchange facilities between connecting lines. Obviously, says the ICC, the interchange must be feasible, which means some kind of physical connection. Thus, the ICC is arguing on the one hand that the interchange-facilities portion of § 3(4) inhibits the Court's construction of § 3(4) in a rate discrimination case, and on the other hand that *Chicago, I. & L. R.R.* is irrelevant to this case because it involves interchange facilities.

But surely the best example of appellees' ambivalence occurs in relation to *St. Louis S. W. Ry.* v. *United States,* 245 U.S. 136 (1917). On pages 30-31 of their brief, the railroad appellees attempt to distinguish that case from this one on the ground that *St. Louis* was a § 3(1) case and therefore irrelevant to this § 3(4) proceeding. Not three pages later (pp. 34-35), the railroad appellees are upholding the relevancy of

Thompson to the instant case on the ground that "The definition enunciated in the *Thompson* case, *supra,* affirmed the earlier definition adopted by this Court in [*St. Louis*], which did involve Section 3 as well as Section 15 of the Act." Appellees, we suggest, cannot have *St. Louis* both ways—as relevant and irrelevant at the same time.

Similarly, the railroad appellees argue that §3(4) must be considered in the light of all other sections of the Act (RR App. 11-12), and yet they attempt to distinguish one case on the ground that it "relates to issues under Section 4 of the Act which are entirely foreign to a Section 3(4) proceeding" (RR App. 58).

Our main brief deals fully and completely with the issue of similarity of circumstances. We add here only one point. The railroad appellees continue to assert (RR App. 55) that equalizing both routes south of Portland will force Northern Pacific to route Bieber traffic destined to points east of the Cascades via Auburn. Section 3(4) relief only requires the offending lines to treat both common connections equally. Southern Pacific traffic is not now moved by Northern Pacific east of the Cascades via Auburn. If Northern Pacific were to move Bieber traffic to such destinations via Auburn, that would be its own choice and would be another way, by its own actions, of continuing an act of discrimination. All we seek, and all that can be given under §3(4), is equal treatment to the traffic of both Southern Pacific and the Bieber route.

We have already dealt sufficiently in our main brief with *Atlantic Coast Line R.R.* v. *United States,* 284 U.S. 288 (1932). Appellees have not refuted our interpretation of that case. Although they discuss the

case at length, they nowhere come to grips with the fact that the route being discriminated against in that case was not even commercially open at the time of the discrimination, and therefore this Court could not possibly have referred to "through route" in the *Thompson* sense. Moreover, the Court in *Atlantic Coast Line* obviously did not intend a restrictive definition of connecting-line status. It was saying merely that here, at the very least, connecting-line status was present.

Even assuming, however, that this Court's *Atlantic Coast Line* opinion could somehow be explained away, the ICC's subsequent decision in that same case definitely cannot be. 191 I.C.C. 489 (1933). The difficulty of that subsequent opinion for appellees is shown by their inability to agree on why it is distinguishable from this case. The railroad appellees say that the Piedmont formed a direct physical connection with the Clinchfield, and that the G & F, although "an indirect connection," did participate in "a large number of through routes and rates with the Clinchfield." (App. 24.) Therefore, they say, the definition of "connecting lines" in the subsequent opinion comports with the definition they seek to establish here. It is quite true that, as the ICC's subsequent opinion stated, "in many instances the through routes in connection with the Clinchfield * * * sought by complainants are already in existence * * *" (191 I.C.C. at 499). But those were not the only routes involved. On the contrary, a large number of joint rates were sought over territories where such through routes were *not* in existence. This was pointed up at the very outset of the opinion when the ICC posed the problem at hand: "[The complainants] allege by complaint, as amended,

that defendants, *by their* failure and *refusal to permit complainants to participate* between Spartanburg, S. C., and August, Ga., *in through routes* and joint rates now maintained on traffic generally between points in southeastern territory, on the one hand, and Groups A, B, & C * * * on the other hand," violated the lease conditions (191 I.C.C. at 490; emphasis added). The ICC held that the refusal and failure also violated § 3(3) (now § 3(4)) of the Act. It ruled:

> The fact remains, however, that *through routes* and joint rates between the territories here considered are in effect over defendants' lines in connection with the Southern between Augusta and Greenwood or Spartanburg and in connection with the Seaboard Air Line between Greenwood and Bostic, and *similar routes* and rates in connection with complainants' lines between Augusta and Spartanburg are *denied* complainants. This situation clearly falls within the inhibitions of section 3(3) of the act. [191 I.C.C. at 498-499; emphasis added.]

It is instructive that the ICC does not urge the same interpretation of the ICC's subsequent *Atlantic Coast Line* opinion as do appellees. Instead, the ICC argues that in the subsequent proceeding, no one raised the question of connecting-line status, that the Piedmont was a complainant, and that since the Greenwood extension had been completed, "direct physical connections were present." (ICC 33 n. 11.)

Connecting-line status, of course, is necessarily involved in any § 3(4) case. A determination of that status is a statutory prerequisite to a finding of discrimination. Moreover, the defendants specifically stated the basic issue in the subsequent *Atlantic Coast Line* proceeding to be as follows:

> The finding of Division 3 is, therefore, that—aside from any question as to the lease conditions—if the defendants voluntarily consent to be short-hauled between Augusta and Greenwood or Spartanburg by participation in rates with other carriers, the Southern Railway, for example, section 3(3) is violated unless similar participation is accorded also to the G. & F.-P. & N. There is thus raised very directly in this case the question as to the true meaning and intent of the phrase 'discrimination between connecting lines,' as embodied in that portion of section 3(3) which provides * * *. [Petition on Behalf of Atlantic Coast Line System Lines, Defendants, for Reconsideration and Reargument before the Entire Commission, filed April 26, 1933, p. 6.]

The argument that the Piedmont, which physically connected with the Clinchfield, was a complainant in the case ignores the fact that the G & F, which had no such physical connection, was also a complainant and required connecting-line status. The Piedmont, in fact, had also been a complainant in the original proceeding, and yet this Court felt called upon to rule that "There is no warrant for limiting the meaning of 'connecting lines' to those having a direct physical connection with the Clinchfield" 284 U.S. at 293.

Similarly, when the ICC says that "direct physical connections were present" after the Greenwood extension was completed, it ignores the fact that the physical connection was with the Piedmont, not the G & F. At no time, before or after the completion of the extension, did the G & F connect physically with the discriminating carriers.

In sum, the attempts by the appellees to deal with the *Atlantic Coast Line* decisions come to nothing.

The railroad appellees argue that § 3(4) refers to discrimination against "lines" and not against "routes." This is quite true. Obviously, Congress did not want to provide even by implication that an entire route had to be damaged, or that all lines making up a route had to join in a single complaint, before the courts could enforce a remedy. The purport of § 3(4) is that a particular discrimination may be inflicted on one line more than on another, and relief may be sought by a single line. The *form* that the discrimination takes, however, may be against a route made up of several lines, as in this case. Our whole point is that Western Pacific cannot be denied relief simply because the discrimination here is practiced against the Bieber route in favor of the Southern Pacific route. Western Pacific is now receiving the *disadvantage* of the discriminatory rates just as surely as the various lines making up the Southern Pacific route are each receiving the *advantage* of such rates.

As a matter of fact, the term "connecting line" has been used by appellees to denote the collective lines of more than a single carrier. In its brief in this very case, the ICC says that in *Atlantic Coast Line,* the "P & N had a line between Spartanburg and Greenwood and the G & F proposed to build a line between Greenwood and Augusta, thereby giving the P & N and the G & F, together, *a connecting line* between Spartanburg and Augusta competing with the single line of the C & W C" (ICC 27; emphasis added). The Court will note that the ICC is here using the term "connecting line" to include two separate lines of two separate carriers that connected at one point. Elsewhere in its brief, the ICC interchangeably refers to the same set of lines as "the P & N-G & F *route* be-

tween Spartanburg and Augusta" (ICC 28; emphasis added).[8]

Finally, appellees have much to say—but little to contribute—about the legislative history of § 3(4). They assert that Senator Cullom's remarks were made at a time when the connecting-line concept was not a part of the pending bill. In the first place, we were relying on Senator Cullom principally for the proposition that discrimination was to be outlawed in all its forms—a proposition clearly established in later cases. But secondly, Senator Cullom did refer to "connecting roads" and "a connecting line," and it is thus clear that his remarks formed a basis for the bill enacted one year later. Suffice it to say on this subject that appellees have not come forward with a single line of legislative history to support their present construction of § 3(4). In fact, the main thrust of their legislative history argument seems to be that § 3(4) requires a direct physical connection—an interpretation which they themselves then proceed to repudiate.

We respectfully urge the Court to adopt a definition of connecting-line status that carries out the underlying congressional purpose, conforms with prior case

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[8] The railroad appellees, although urging that § 3(4) refers only to "lines," significantly compare entire *routes* when they discuss similarity of circumstances (RR App. 51-53).

law, and at the same time meets the rigorous demands of today's intramodal competition.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 12.—October Term, 1965.

The Western Pacific Railroad Company et al., Appellants, *v.* United States et al.	On Appeal From the United States District Court for the Northern District of California.

[December 7, 1965.]

Mr. Justice Stewart delivered the opinion of the Court.

Section 3 (4) of the Interstate Commerce Act, 54 Stat. 902, 49 U. S. C. § 3 (4), commands that "All carriers subject to the provisions of this chapter . . . shall not discriminate in their rates, fares, and charges between connecting lines. . . ."[1] The meaning of the term "connecting lines" is the crucial question in this controversy between the Western Pacific Railroad Company, on the one hand, and the Union Pacific Railroad Company and the Northern Pacific Railway Company, on the other. Western Pacific contends that it is a "connecting line" in relation to these carriers and that, therefore, it is entitled to invoke against them the provisions of § 3 (4)

[1] Section 3 (4) provides in full:

"All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water subject to chapter 12 of this title."

prohibiting discriminatory rates. The Interstate Commerce Commission and the District Court held otherwise.

Western Pacific filed a complaint with the Commission, alleging, in part, that Union Pacific and Northern Pacific practice rate discrimination against it.[2] The alleged discrimination consists in the refusal of these carriers, except with respect to a few commodities, to enter into joint through rates via Portland, Oregon, with the route of which Western Pacific is part, although they maintain a full line of such rates with a competitor, the Southern Pacific Company. The hearing examiner found in favor of Western Pacific, but Division 2 of the Commission reversed. The Division found both that Western Pacific could not invoke the provisions of § 3 (4) because it was not a "connecting line," and that, even if it were, the evidence did not establish the "similarity of circumstances and conditions" that would compel rate treatment equal with that accorded to Southern Pacific.

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[2] Western Pacific and its subsidiaries named as defendants: The Northern Pacific Railway Company, The Union Pacific Railroad Company, and certain of their short-line connections. These railroads denied the allegations of the complaint. The Southern Pacific Company intervened in opposition to the complaint. The complaint also named as defendants: The Atchison, Topeka & Santa Fe Railway Company, The Great Northern Railway Company, and certain short-line connections. These railroads answered expressing willingness to join in the relief sought by Western Pacific.

The complaint also alleged violation of § 1 (4) of the Act which requires, in part, that railroads establish "reasonable through routes" with other carriers and "just and reasonable rates, fares, charges, and classifications applicable thereto . . . ." When such routes are not established voluntarily, the Commission has authority under § 15 (3), to prescribe them "in the public interest." This authority is subject to the short-haul limitation embodied in § 15 (4). Although the complainants indicated a willingness to rely solely on the alleged violation of § 3 (4), the Commission found against them on the § 1 (4) allegation as well. No question under § 1 (4) is presented here.

The Division refused to accord Western Pacific "connecting line" status on the ground that it neither physically connects with the allegedly discriminating carriers at the point of discrimination, nor participates in existing through routes with them through that point. *Western Pacific R. Co.* v. *Camas Prairie R. Co.*, 316 I. C. C. 795. When the full Commission denied further hearing, Western Pacific brought this action in the United States District Court for the Northern District of California to set aside the Commission's order. The three-judge court dismissed the complaint solely on the ground that Western Pacific was not a "connecting line." *Western Pacific R. Co.* v. *United States*, 230 F. Supp. 852. It agreed with the Commission's limited definition of the term and said, "Any further liberalization of the present definition will have to come from the Supreme Court." *Id.*, at 855. We noted probable jurisdiction. 379 U. S. 956.

Analysis of "connecting line" status in this case is closely tied to the geographical, structural, and economic relationships among the railroads involved. Union Pacific, Northern Pacific and their short-line connections provide exclusive rail service between many points in the Pacific Northwest and Portland, Oregon. From Portland, the two competitive routes in question descend, at times parallel, at times intertwined, to Southern California. The route closest to the seacoast consists largely of Southern Pacific. To the east of this route lies the so-called Bieber route whose completion in 1931 was authorized by the Commission to provide competition with Southern Pacific.[3] The Bieber route is composed of the end-to-end connections of three different companies: the Great Northern Railway from Portland to

[3] Great Northern Ry. Co. Construction, 166 I. C. C. 3, 39; 170 I. C. C. 399.

Bieber, California; the Western Pacific from Bieber to Stockton; and the Atchison, Topeka & Santa Fe from Stockton to Southern California. Thus the Bieber route and Southern Pacific both connect with the allegedly discriminating carriers at Portland where facilities for the interchange of traffic exist.

The Bieber route carriers presently enjoy joint through rates among themselves. Moreover, the other two participants in that route have expressed willingness to join with Western Pacific in the joint rates it seeks with Union Pacific and Northern Pacific. Union Pacific and Northern Pacific, for over 50 years, have maintained through routes and a full line of joint rates with Southern Pacific via Portland. They have refused, however, except for a few commodities, to offer through routes and joint rates on traffic moving on the Bieber route through Portland. The joint rates established with Southern Pacific are lower than the combination of local rates that would otherwise apply. Since the Bieber route carriers can offer joint rates only with respect to a few commodities, they cannot match the lower rates offered by Southern Pacific to shippers of most commodities between points in California and points in the Pacific Northwest exclusively served by Union Pacific and Northern Pacific via Portland.

The Commission and the District Court held, however, that even under these circumstances, Western Pacific is not a "connecting line" eligible to complain of the alleged discrimination. In argument here the Commission and the appellee railroads contend that to qualify for that status Western Pacific must show more than that it participates in an established through route that connects with Union Pacific and Northern Pacific, and that all the participants in the route stand willing to cooperate with these carriers in establishing joint through

rates.[4] We are urged to hold that to qualify under § 3 (4) as a complainant "connecting line" a railroad must either itself make a direct connection with the discriminating carrier, or be part of a through route that already includes the carrier. We cannot accept such a construction of the statute.

The literal meaning of the statute does not require that construction. To be sure, the term, "connecting lines" suggests the requirement of an actual physical connection between the complainant and the discriminating carrier. The term "line," however, admits of more than a single meaning limited to the track owned exclusively by one railroad company. It may also be interpreted reasonably to include a functional railroad unit such as the Bieber through route involved here. Moreover, all parties in this litigation recognize that in *Atlantic Coast Line R. Co.* v. *United States*, 284 U. S. 288, this Court rejected the contention that "connecting line" is a term limited to the meaning that the statutory language might initially suggest. Mr. Justice Brandeis, speaking for a unanimous Court, wrote, "There is no warrant for limiting the meaning of 'connecting lines' to those having a direct physical connection. . . . The term is commonly used as referring to all the lines making up a through route." *Id.*, at 293.

There also is no warrant for limiting the meaning of "connecting lines" to the lines making up a through route that already includes the discriminating carrier. We have been referred to no previous judicial or administrative decisions compelling that conclusion. The *Atlantic Coast Line* case, *supra*, imposes no such limi-

[4] Pursuant to 28 U. S. C. § 2322, the United States was named as defendant in the District Court. It did not, however, join with the Commission in defense of the Commission's order, and it supports Western Pacific in this Court.

tation. It established that the term "connecting lines" extends beyond physical connection to encompass lines participating in a through route, but it does not even hint of any limitation on the nature of the through route, much less hold that the through route must already include the discriminating carrier.[5] Our subsequent definition of "through route" in *Thompson* v. *United States*, 343 U. S. 549, adds no more to an analysis of "connecting line" under § 3 (4). In that case, which arose under §§ 15 (3) and 15 (4) of the Act, we held that the Commission had improperly applied the test of the existence of a through route: ". . . whether the participating carriers hold themselves out as offering through transportation service." 343 U. S. 557. Section 3 (4) does not use the term "through route." But even if, after *At-*

[5] In the *Atlantic Coast Line* case, certain railroads leasing the Carolina, Clinchfield & Ohio Railway with the approval of the Commission filed restrictive schedules designed ultimately to exclude an as yet incomplete extension of the Georgia & Florida Railroad from participating, when completed, in joint rates over the Clinchfield. The Commission ordered the schedules canceled on the ground that they violated terms in the lease, accepted by the lessees, on which the Commission had conditioned its approval. One condition required the lessees to permit the Clinchfield to be used as a link for through traffic with "such other carriers, now connecting, or which may hereafter connect with [it] . . . ." 284 U. S., at 292, note 3. The extension of the Georgia & Florida made connection with the Clinchfield only via the rails of an intermediate carrier. This Court sustained the Commission's order, however, and held that the Georgia & Florida was a carrier connecting with the Clinchfield because it was one of the "lines making up a through route." 284 U. S., at 293. Even assuming that the through route referred to was not one limited to the complaining carrier and the intermediate carrier, it is clear that this Court was not faced with the question whether the complaining railroad would be regarded as a "connecting line" if the through route establishing the connection did not also encompass the Clinchfield. In short, *Atlantic Coast Line* did not present the issue squarely before us now.

lantic Coast Line, a carrier may qualify as a "connecting line" if it is one of the "lines making up a through route," 284 U. S., at 293, the *Thompson* test offers no solution to the problem presented here. It simply does not speak to the question whether the discriminating carrier must be one of the participating carriers offering through service in conjunction with the carrier seeking "connecting line" status.

The reason the issue presented in this case has not been decided before now[6] may be that discrimination of the sort complained of here is uncommon. In most instances it is to the advantage of railroads such as Union Pacific and Northern Pacific to encourage the movement of traffic over their lines from as many sources as possible.[7] Moreover, when such discrimination does occur the railroad connecting directly with the discriminating carrier is likely to take the lead as complainant.

In the absence of any settled construction of § 3 (4), then, its manifest purpose to deprive railroads of discretion to apportion economic advantage among competitors at a common interchange must be the basic guide to decision. Just such discretion would be conferred upon railroads in a position to discriminate if we were to hold that their decisions not to enter through route relationships with connecting through routes could bar nonadjacent participants in such through routes from eligibility to complain. Indeed such a holding would

[6] Although we do not regard *Chicago, Indianapolis & Louisville R. Co.* v. *United States*, 270 U. S. 287, as dispositive of the question presented, that case, on its facts, supports the conclusion we reach.

[7] In response to an inquiry at oral argument, the parties have submitted memoranda agreeing that through routes and joint rates are ordinarily established by voluntary agreement, and that a railroad usually interchanges traffic on a comparable basis with competing railroads at a common interchange. See also *Thompson* v. *United States*, 343 U. S. 549, 554.

result in an anomalous set of circumstances clearly illustrated in the present context. No one doubts that Southern Pacific, by virtue of its direct physical connection, is eligible to complain of rate discrimination if it were practiced in favor of the Bieber route. It is also undisputed that Great Northern would be eligible to complain of the present discrimination, not merely as it affects its segment of the Bieber route, but on behalf of the route as a whole. Moreover, it is clear that if Union Pacific and Northern Pacific had entered a through route relationship with the Bieber route and then had decided to abandon it, or to set rates somewhat higher than those set for Southern Pacific, any participant in the Bieber route could complain of that discrimination. We cannot therefore construe § 3 (4) to bar these participants from eligibility to complain solely because they have been put to an even greater competitive disadvantage by the refusal of the allegedly discriminating carriers to enter a through route relationship with them comparable to the one established with Southern Pacific. Hence, we hold that to qualify as a "connecting line," in the absence of physical connection, a carrier need only show that it participates in an established through route, making connection at the point of common interchange, all of whose participants stand willing to cooperate in the arrangements necessary to eliminate the alleged discrimination.

Such a construction of "connecting line" does not interfere with the function of the Commission under § 15 (3) of the Act to require the establishment of through routes and joint rates "in the public interest." [8]

[8] Section 15 (3) provides in relevant part:

"The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by car-

Section 3 (4) is applicable only to a narrower range of situations involving discrimination at a common interchange. Moreover, the remedy in § 3 (4) situations need not entail the establishment of through routes, joint rates, or indeed any particular form of relief. All that is required is the elimination of discriminatory treatment. See *Chicago, Indianapolis & Louisville R. Co.* v. *United States*, 270 U. S. 287, 292–293; *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, 520–521. Finally, our holding does no more than to define the characteristics of a carrier eligible to complain. Relief is warranted only if it also appears that differential treatment is not justified by differences in operating conditions that substantially affect the allegedly discriminating carrier. See *United States* v. *Illinois Central R. Co., supra*, at p. 521; *Atchison, Topeka & Santa Fe R. Co.* v. *United States*, 218 F. Supp. 359, 369.

In the present case, having found that Western Pacific was not eligible to complain, the District Court did not reach the question whether it was entitled to relief. We therefore vacate the judgment and remand this case to the District Court for further proceedings consistent with this opinion.

It is so ordered.

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riers subject to this chapter . . . or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated."

SUPREME COURT OF THE UNITED STATES

No. 12.—October Term, 1965.

The Western Pacific Railroad Company et al., Appellants, v. United States et al.	On Appeal From the United States District Court for the Northern District of California.

[December 7, 1965.]

Mr. Justice Douglas, dissenting.

Under the Interstate Commerce Act, 49 U. S. C. § 1 *et seq.*, as I read it, there are two ways for obtaining "through routes." One is to qualify as a "connecting line" within the meaning of § 3 (4) where a similarly situated competing carrier has been given a through route.[1] The other is to apply for a rate for a "through route" under § 1 (4).[2] In the event that a carrier refuses to

[1] Section 3 (4) provides:

"All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and *connecting lines*, and for the receiving, forwarding, and delivering of passengers or property to and from *connecting lines*; and shall not discriminate in their rates, fares, and charges between *connecting lines*, or unduly prejudice *any connecting line* in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water subject to part III." (Italics added.)

The discriminatory refusal to enter into through routes has been held to constitute a violation of § 3 (4). See *Dixie Carriers, Inc.* v. *United States*, 351 U. S. 56.

[2] Section 1 (4) provides in part:

"It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such car-

establish a "through route," the Commission may "upon complaint or upon its own initiative without complaint establish a "through route" when "deemed by it to be necessary or desirable in the public interest." § 15 (3).[3]

In this case appellants sought a "through route" with the defendants on the same basis as the joint rates the defendants had established with the Southern Pacific. In an adversary proceeding the Commission denied the establishment of a "through route" under § 1 (4) saying:

> ". . . The shippers urge that the rates and routes sought would give them more freedom of choice in the movement of their goods, would improve transportation service, time in transit, and car supply, and make available additional transit privileges. Nothing of record, however, indicates that the existing through routes and joint rates are inadequate to meet the needs of the shipping public. In fact the failure of the shipper witnesses to initiate in the last 31 years a determined campaign to persuade the defendants of the necessity of establishing through routes between points on the complainants' lines in California and points on the defendants' lines in the Northwest, is at least some indication of the adequacy of the existing routes. The expression 'in

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riers, and just and reasonable rates, fares, charges, and classifications applicable thereto; . . ."

[3] Section 15 (3) provides in part:

"The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, subject to this chapter, or by carriers by railroad subject to this chapter and common carriers by water subject to chapter 12 of this title, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated."

the public interest' means more than a mere desire on the part of shippers for something that would merely be convenient or desirable for them. This desire must be weighed against the effect on other carriers and the general public. On the basis of this record, we cannot find that the public interest would be served by requiring the establishment of joint rates and through routes which are substantially slower and costlier than the present routes." 316 I. C. C. 795, 810–811.

What the Court does today is to let § 3 (4) swallow § 1 (4) by letting any segment of a multi-carrier through route become a "connecting line."[4] For then the ban in § 3 (4) on discriminatory rates *in effect* forces the establishment of "through routes" with "just and reasonable rates" as required by § 1 (4), without satisfying any of the conditions of § 1 (4) and of § 15 (3). Indeed after today, the whole protective scheme of § 15 (3) which makes the Commission the guardian of "through routes" (see *St. Louis Ry. Co.* v. *United States*, 245 U. S. 136, 142–143) breaks down.

In addition to the conditions set forth in § 15 (3) the Commission's power to compel the establishment of through routes is limited by § 15 (4), which prevents the Commission from establishing any through route requiring a carrier to "short haul" itself except where particular circumstances (enumerated in § 15 (4)) are found to exist. See *Thompson* v. *United States*, 343 U. S. 549, 552–556; *Denver & R. G. W. R. Co.* v. *Union Pac. R. Co.*, 351 U. S. 321, 325 *et seq.*; *Chicago, M., St. P. & P. R. Co.* v. *United States*, 366 U. S. 745. Can a carrier after

[4] The term "multi-carrier through route" as used here is used to indicate a route composed of two or more carriers who have established among themselves a through route with joint rates. This, of course, describes the Bieber route from Southern California to Portland.

today's decision be compelled to "short haul" itself where an internal segment of a multi-carrier through route invokes § 3 (4)? [5]

Section 3 (4) narrowly construed to include only lines that physically abut, would, of course, lift some cases from § 1 (4) and from § 15. But those are the exceptions, relatively few in number. The Court multiplies those almost without end when it holds that any interior segment of an established multi-carrier through route is a "connecting line" within the meaning of § 3 (4).

Today's decision uproots the established concept of "through routes." As we stated in *Thompson* v. *United States*, 343 U. S. 549, 557 (quoting from the Commission's 21st Annual Report to Congress):

> "A through route is a continuous line of railway formed by an arrangement, express or implied, between connecting carriers . . . . Existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and division of transportation charges, or the use of a proportional rate to or from junction points or basing points. These incidents named are not to be regarded as exclusive of others which may tend to establish a carrier's course of business with respect to through shipments."

Then we added:

> "In short, the test of the existence of a 'through route' is *whether the participating carriers hold themselves out as offering through transportation service.* Through carriage implies the existence of a through

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[5] Congress has refused, although requested to do so by the Commission, to repeal § 15 (4). See *Thompson* v. *United States*, *supra*, at 555.

route whatever the form of the rates charged for the through service." *Id.*, at 557. (Italics added.) And see *Denver & R. G. W. R. Co.* v. *Union P. R. Co.*, 351 U. S. 321, 327, 330.

Here there has been no "holding out" by the participating carriers (either consensually or as a result of any Commission action that offers this interior segment of this multi-carrier route to become a part of any "through route." If we are to allow § 1 (4) and §§ 3 (4) and 15 (3) to exist in harmony, we must adhere to that requirement, restricting "connecting line" to those that have a direct physical connection with the allegedly discriminating carrier.

Atlantic Coast Line R. Co. v. *United States*, 284 U. S. 288, is not opposed. While the line in question was only a segment in a multi-carrier system, it had "through routes" with the other carriers in controversy. *Id.*, at 292. The words "connecting lines" [6] were therefore used to include "all the lines making up a through route." *Id.*, at 293. But there is no "through route" here, the defendants not having agreed to one and the Commission having expressly disallowed one pursuant to its power under § 15 (3).

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[6] Section 3 (4) was not involved. What was in litigation was the construction of one of its earlier orders allowing one carrier to lease another. Commission approval was accompanied by conditions assuring "equal service, routing, and movement of competing traffic to and from all connecting lines" reached by the lessee. 284 U. S., at 292. It was in that context that the Court held that carriers were protected even though their rails did not "physically abut" on the rails of the lessee. 284 U. S., at 293.